



“SERVICES TO AGGREGATOR” UNDER SERVICE TAX – REVERSE CHARGE

- By CA Roopa Nayak

Service tax is leviable on the taxable services provided in territory of India, other than those in negative list or a subject matter of exemption. As per Place of Provision Rules, if determined that the taxable services are provided outside India, then there is no ST liability.

In this backdrop we attempt to examine the levy of service tax on the aggregator and service providers to the aggregator. At present there is not much information and with some clarification matter may in future be clear.

Who is an Aggregator?

The term aggregator in ST Rules at Rule 2(1)(aa)- means

- a person,
- who owns and manages a web based software application,
- and by means of the application and a communication device,
- enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;

Let us understand the concept of the aggregator with an example, in this transaction there are three persons, viz, Service Provider, Service Receiver and the Aggregator. The Aggregator enables/facilitates the provision of the service between the service provider and the service receiver, which is a similar scope that of the intermediary or a broker, however the difference between the intermediary and aggregator is a under

- a. In case of the Aggregator, the service provider provides the service under the brand name of the aggregator, whereas in the case of regular intermediary, the service is provided by the service provider on his own brand.
- b. In case of the Aggregator, it is mandatory that he manages the web application, whereas for regular intermediary there is no such requirement.

The term “brand name or trade name” means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a

symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person

The present definition is only covering aggregator in respect of **services** and **not covering aggregator in respect of goods**. A very good example of Aggregator is Uber and OLA, where the company manages Mobile App and connects to the owner/operator of radio cab with the passengers.

When the amounts get credited directly into account of the aggregator such as Uber, it is liable as a service provider on its own account. It is also liable on the commission receipts from the operator. When the operator collects charges from passengers directly working under aggregator’s brand name, ST liability arises under reverse charge on the aggregator.

Liability of Aggregator to pay service tax

As per the provision where the taxable services **liable for service tax** are provided under aggregator model, service tax payment has to be made by the aggregator as follows:

- If aggregator is located in India, aggregator himself has to pay;
- If aggregator is not located in India but has a representative office located in India, then such representative office located in India has to pay;
- If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.

Impact

- i. Liability to pay Service Tax has shifted from the vendor to the aggregator, the Cenvat Credit accumulated by a vendor on expenses will remain unutilized. Vendors will have no option but to absorb the cost of Service Tax charged their expenses, since no refund of such credit will be allowed.
- ii. Aggregators will now have to maintain proper records of their own Service Tax liability (on charges recovered from vendors) with the liability resting on them for the service providers

Issues and Challenges:

In the changed legal position some of the issues and challenges can be listed out as follows:

- a. How do the aggregators determine the taxability of each transaction considering the place of provision of service.
- b. How does the aggregator ascertain the applicable exemptions and abatements in each transaction.
- c. The service provider has to segregate the services provided directly and services provided through aggregators. The first one will be liable for service tax and the second one is not liable for service tax.
- d. For the service provider the services provided involving aggregator will become exempted services as defined in CENVAT Credit Rules, 2004, whereby the service provider is not eligible for CENVAT Credit relating to that and if other services are there the provisions of Rule 6 will become applicable.
- e. If the aggregator who does not have presence in India and also does not appoint agent, then what happens and how does the administration happen to make such aggregator liable to pay the tax.

Other issues

Issue: Whether services of various service providers to Aggregator would be covered by notification no. 33/2012-ST?

Comments: *The branded taxable services provided under brand name of aggregator would be liable to service tax in hands of aggregator under reverse charge. Then aggregator has to pay 100% of ST liability on such services.*

Issue: Whether service providers providing services under brand name of aggregator, are liable to service tax on the services provided by them?

Comments: *The service provider would be liable to service tax, on own unbranded services, provided by the service providers directly to their own customers, subject to SSP exemption upto Rs 10 Lakhs pa, provided previous year value of taxable services is less than Rs 10 Lakhs pa.*

Issue: Whether value of branded services provided by service providers on which aggregator pays service tax are treated as exempt services and require the service providers to reverse related credits?

Comments: *The turnover of service providers on which ST is paid by aggregator under reverse charge would not be treated as exempted service. There is no need for service providers*

providing services under brand name of aggregator, to reverse Cenvat credit related to the services on which aggregator pays Service Tax under reverse charge.

Issue: Whether the service providers providing branded services under brand name of aggregator could avail eligible credits related to the services on which aggregator pays Service Tax?

Comments: *Service providers could avail the eligible credit related to the services on which aggregator pays ST under reverse charge **if eligible**. Alternately could go for refund of eligible credits used for providing such services on which aggregator pays ST, as per Rule 5B of CCR which enables refund of accumulated CENVAT credit to service providers providing services taxed on reverse charge basis.*

Issue: In aggregator model whether invoice has to be raised on customer by Aggregator or by service providers who provide services under brand name of aggregator? Who should receive payment from the customer?

Comments: *Aggregator would pay the ST on the gross amount billed towards branded services provided under aggregator brand name by service providers. The invoice could be raised by the service provider providing branded services to end customer. The payment from customer could be received by service provider from the customer. Alternately Aggregator also could receive payment for the service provided under brand name of the service provider.*

Issue: Whether any declaration on invoices of service providers has to be made highlighting the service tax discharge by aggregator?

Comments: *The service providers can mention in the invoices raised, that “the service tax liability would be paid by the aggregator on these services as the person liable for paying ST for the taxable service as per Sl no. 11 of the notification 07 / 2015 –ST. Injurisdiction the service tax on gross amount is being paid by Aggregator.*

Issue: Whether all end customers of should access through web application directly?

Comments : *Wherever access is done on behalf of customers or by customers of service provider providing service under the brand name or trade name of the aggregator, it is sufficient compliance. In cases where the customer is not having access/capacity/not tech savy then may get the service provider to do on his behalf. As long as taxable service is involving aggregator, the aggregator is liable to pay 100% ST under reverse charge.*

Issue: How to disclose the transactions in ST-3 returns of Aggregator and branded service provider?

Comments: *The service tax liability is to be disclosed by aggregator in the ST-3 returns by Aggregator under service receiver portion of ST payable sheet, in respective months from March 15 onwards.*

The services on which ST liability is paid by aggregator, is to be disclosed by the service provider as part of the value of gross taxable services in service provider portion of the ST-3 Service tax payable sheet. Then deducted at the row where it specifies any other deductions claimed. Deduct the value of the services on which ST is paid by Aggregator. Mention in the narration-service tax liability paid by aggregator under reverse charge vide notification no.7/15-ST.

Issue: Normally service tax paid under reverse charge is available as Cenvat credit to receiver of service. Whether aggregator is eligible to avail cenvat credit of service tax paid for aggregator services paid under reverse charge mechanism?

Comments: *Yes, aggregator could avail the eligible Cenvat credit of ST paid under reverse charge, subject to eligibility of such credit under CCR. The credit could be set off against the output ST liability on taxable services provided by aggregator.*

Conclusion

The levy is to come into immediate effect. [1st March 2015] Such aggregators may seek clarity and also make representation. However not paying the service tax may lead to demands with interest and penalty and therefore payment of ST under protest is advisable.