SERVICE TAX ON INDUSTRIAL CANTEEN SUPPLIES

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There is confusion with respect to levy of service tax on the services provided by outdoor caterers to industries after the amendment made in mega exemption notification no.25/2012 on 22.10.2013. Presently, few of the caterers have been charging and collecting service tax for such services unless questioned. In this article, we have tried to analyse and interpret the exemption entry which could be useful to many assessees availing the outdoor catering services.

An exemption entry 19A has been brought into the mega exemption notification in service tax from 22.10.2013 which is as follows:

"Services provided ***in relation to*** *serving of food or beverages* ***by a canteen maintained in a factory*** *covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year".*

Exemption only for A/C canteens?

With the introduction of this entry, the first confusion which got created is whether the exemption is available only in case of air-conditioned canteen maintained in factory or it covers non air-conditioned canteens as well.

In this regard, it is essential to consider exemption entry no.19 which reads as under:

"Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year".

As the canteen in a factory could also be treated as restaurant or eating joint, it could be concluded that the food served in canteen without air-conditioned facility is exempted from service tax.

Exemption to A/C canteen

The other confusion created in minds of assessee is whether the service provided by outdoor catering agency to factory is exempted or is it service provided from factory to employees exempted?

One interpretation which could be made is that the exemption is available when the canteen services are provided by factory / employer to employees and amounts are collected for it. The exemption is not available when services are provided by outdoor catering agency to factory. This is because the words used are 'services by a canteen' and not 'services provided to canteen'. Readers should also note that the Supreme Court in case of *CCE Vs. Mewar Bartan Nirman Udyog 2008 (231) ELT 0027 (SC)* has held that exemption notification has to be read strictly and the exemption has to be interpreted in terms of its language used in the notification. Similar view was held in case of *Sarabhai M Chemicals Vs CCE 2005 (179) ELT 0003 (SC)* by the Supreme Court.

The other beneficial interpretation which could be made is that exemption is available to services provided *"in relation to"* serving of food or beverages by a canteen. Even the services of outdoor catering agency are 'in relation to' serving of food by a canteen and thus eligible for exemption. The authors are of the view that this interpretation would hold good as the intention of this entry seems to be to reduce cost of food for employees. Contrary to views expressed by Supreme Court in earlier discussed case laws, the Supreme Court in case of *Comm. Of Customs Vs. M Ambalal & Co. 2010-TIOL-111-SC-CUS* had held that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. In the present case, as the intention could be to reduce the service tax cost to the employees, the notification entry could be liberally interpreted.

As different views are possible, it is essential for the CBEC to clarify and remove the confusion with regard to exemption as different views are followed by the caterers. Moreover, the Cenvat credit of service tax paid on canteen service is also being disallowed to the assessee by the department stating that the services are consumed by employees. It may be noted that recently the tribunal in case of *Hindustan Coca Cola Beverages (P) Ltd. Vs. CCE* 2014-TIOL-2460 *CESTAT Mumbai* has held that the credit shall be allowed on canteen services when it is generally used for business purpose in a factory where having canteen is mandatory with 250 or more workers. The issue has been discussed in detailed manner in our previous article.

It is pertinent to note that the Cenvat credit on canteen services shall be allowed to other organisation even if it is not mandatory to have canteen as per Factories Act

when services are in relation to business. In this regard, we could rely on the judgment of *CST Vs. Reliance Capital Asset Mgt Ltd 2015-TIOL-447-CESTAT-MUM* wherein the tribunal held that the credit would be eligible even for small organisation. The tribunal said that even the employees of a smaller organization having less than 250 workers will also be hungry and required to be provided with canteen facility for the employees which is very logical.

Conclusion

It is very clear that the intention of the Government is to remove burden of service tax on the employees in factory. If the caterer supplying food has been charging the service tax, then the assessee shall bring the exemption entry to his notice and instruct for not charging the service tax. Such caterers could intimate the department about the view followed and claim exemption to avoid unnecessary issues from department.