

Service tax on TDS portion (Import of services)

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In this note a brief explanation has been provided w.r.t to payment of service tax on TDS portion in respect of import of services to make it clear for the assessee to understand liability of service tax on TDS portion in case of import of services.

In case of few specified services, service receiver has been made liable for payment of service tax as per Section 68(2) of Finance Act 1994 read with Rule 2(1)(d)(G) of Service Tax Rules 1994. As per Rule 2(1)(d)(G), in relation to any taxable service provided or agreed to be provided by any person located in a non-taxable territory and received by person located in the taxable territory, the recipient of service is liable for service tax.

Section 67 is clear that for the purpose of payment of service tax, the consideration that is payable for the taxable services provided or to be provided shall be considered. In normal circumstances wherein only monetary consideration is involved, invoice value shall be the value considered for service tax.

Based on the agreement / contract entered, the service receiver could either pay full invoice value or pay invoice value after deducting tax (TDS) under the income tax provisions. In such scenarios, confusion arises on what value of service tax payment needs to be considered either inclusive of TDS portion or exclusive.

Service tax when TDS portion borne by service receiver

In such a case value for payment of service tax would be value of service as per invoice. For example, if service value as per invoice is Rs.2,00,000/- with TDS obligation on service receiver, then the value for service tax payment shall be Rs.2,00,000/-. There would be no need to pay service tax on TDS portion which is over and above Rs.2,00,000/-. This view is supported by a tribunal judgment in case of *Mainetti (India) Pvt. Ltd- 2012 (27) S.T.R. 534 (Com. A)*. In this case, the tribunal held that as the Income Tax element was paid directly to the Government of India by the appellant, such income tax (TDS) should not form part of the gross amount for the calculation of service tax.

Service tax when TDS portion deducted from invoice value

If TDS is deducted from invoice value and then value for payment of service tax would be full invoice value. For example, if the value of service as per invoice is Rs.2, 00,000/- and TDS is deductible from Rs.2,00,000/-, then service tax shall be payable on Rs.2,00,000/-.

The TDS which is deducted from that amount is paid to the Government on behalf of the service provider. The service provider outside the country would be able to get credit of this TDS under the DTAA (Double Taxation Avoidance Agreement). Therefore, such TDS would be treated as part of the consideration for the taxable services.

Conclusion: If the TDS is part of the total consideration charged by the service provider then it is advisable to discharge service tax on the total value of the invoice. Such service tax paid would also be eligible as Cenvat credit where the imported services are used for providing taxable services or used in relation to manufacturing of dutiable goods. If the TDS portion is borne by the service receiver which is over and above the value of service as per invoice then it may not be required to consider that TDS portion for payment of service tax.