

SERVICE TAX ON REIMBURSEMENTS – WILL THERE BE LIGHT AT THE END OF THE TUNNEL?

Service Tax, which made a modest beginning in the year 1994 is slowly gaining momentum, in all spheres, be it the rate of tax or the scope of the coverage. Once, the issues of classification and valuation were labelled as “Most litigation prone” in the central excise field, which have to some extent attained a finality now. Now, it is the turn of the Service Tax. Thanks to the loosely worded definitions, under which anything can be categorised as one service or other, disputes are bound to augur. The valuation in service tax is also beset with certain complications. In this article, we have made an attempt as to the status of “Amount collected by way of re-imbursement of expenses” and their liability to service tax.

As per Section 67 of the Finance Act, 1994, the value of any taxable service shall be the gross amount charged by the service provider. This section also provides for certain inclusions and exclusions, which are not relevant for the present purpose.

It is a common practice in service industry, where the service agreement would provide for a fee for the service, by whatever name called and also for re-imbursement of the actual expenditure incurred by the service provider, while rendering the service. Since the measure of valuation is the gross amount charged, the question arose whether the payment received by the service provider, by way of reimbursement of expenses should also be subjected to the levy of service tax. In the absence of any answer to the question either in the Finance Act, 1994 or in the rules made thereunder, one has to maze through various circulars and instructions issued by the Central Board of Excise and Customs. A careful voyage over all such circulars would result in the following findings.

S.No	Board's Circular/Letter No.	Observation made therein	Our comments
1	F.No.341/43/96 TRU Dated 31.10.1996	A question has been raised whether any expenses incurred by the advertising agency on account of travel, transportation and stay in hotels, etc. is to be excluded for computing the value of taxable service. The answer to this question lies in the negative. As explained above, the value of the taxable service is the gross amount charged by the advertising agency in relation to the services rendered.	Here the issue of any amount collected specifically as reimbursement is not discussed. No deductions would be allowed for any expenses. However the same circular says that any amount paid by the advertising agency, to for getting space/time in print/electronic media, will not be includible in the value of taxable service.

2	F.No.B43/5/97 TRU Dated 02.07.97	Service Tax on consulting engineers shall be on the gross amount charged, excluding the amount incurred by the consulting engineer on behalf of the client towards expenses, which are reimbursed on actual basis. In case the client is billed on a lump sum basis, any deduction from the same on account of reimbursible expenses, for the purpose of determining the value of taxable service shall be permitted on the basis of documentary evidence adduced by the agency.	See how blessed are the consulting engineers!
3	F.No.B43/1/97 TRU Dated 06.06.97	In other words payments made by Custom House Agents on behalf of the client, such as statutory levies (cess, customs duties, port dues, etc) and various other reimbursable expenses incurred are not to be included for computing the service tax.	There is no provision for verification of the claims made by the service providers in this regard.

4	F.No.B43/1/97 TRU Dated 06.06.97	Steamer Agents incur various types of expenses on behalf of the shipping line, such as pilotage and berth time charges, Indian Coast light duties paid to the port authorities, cargo expenses paid to port authorities and transporters such as CONCOR/railways/private transporters, chartered accountants' fee, income tax, brokerage paid on export cargo, ship handling expenses paid to stevedoring agents. It is clarified that in relation to steamer agents, the service charges will constitute the husbandry fee as well as the agency commission on import/export cargo. Other expenses incurred by the steamer agent on behalf of the shipping line shall not be taken into account.	So far so good.
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5	F.No.B43/5/97 TRU Dated 02.07.1997	Service Tax on Manpower Recruitment Agents shall be the gross amount charged to the client for services rendered, excluding the amount incurred by the manpower recruitment agency on behalf of the client towards expenses which are reimbursed on actual basis. The Commissioners may selectively, in doubtful cases require the manpower recruitment agency to substantiate such actual expenses on the basis of documentary evidence. In case the manpower recruitment agency is billing the client on the basis of a lump sum, any deductions from the same on account of reimbursable expenses may be permitted on the basis of documentary evidence adduced by the agency.	
6	F.No.B43/3/97 TRU Dated 26.06.97	Mandap Keepers. The service tax would fall not only on the hire charges for the mandap but also charges for electricity, whether on actual basis or otherwise, charged to the customer. Therefore it may be ensured that the tax is collected on the whole amount even if separate bills are issued one for the rental and the other for electricity charges. Charges collected for various other services like furniture, fittings, vessels, etc. are also includible in the value of taxable service.	Cursed ones!

7	F.No.B11/3/98 TRU Dated 07.10.98	<p>Security Agency. An issue has been raised whether service tax is payable on the entire amount charged to the clients to whom security guards/personnel have been provided, as the bulk of the charges represent salary to the employees (at least minimum wages prescribed under the law), employers' ESI/EPF contribution, income tax deduction at source, professional tax, labour welfare fund and other non statutory charges such as bonus, leave, uniforms, etc. It is clarified that no such abatement from the amount charged to the client for services rendered is available. However, abatement in respect of statutory levies and taxes can be granted provided the same has some direct relation with the services rendered and is hence specifically billed to the client and is reimbursed by the client on actual basis.</p>	Confusing? Read the full text of the circular. You will be more confused.
8	F.No.B 11/3/98 TRU Dated 07.10.98	<p>Market Research Agency. Architects, Interior Decorators, Management Consultants, Real Estate Agents, Underwriters, Chartered Accountants, Cost Accountant, Company Secretaries.</p> <p>Simialar dispensation in respect of reimbursable, out of pocket expenses charged to the client on actual basis is available.</p>	In this composite circular, the largeese is rolled down to all these services.

9	F.No.B11/1/200 2 TRU Dated 01.08.2002	Beauty Parlours. Service tax will be charged on the gross amount and no abatement is admissible on account of the value of materials consumed in providing the service.	Being beauty conscious has its own cost.
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The above analysis would highlight that there has been no uniformity in dealing with the subject and the issue is left to the respective persons who have drafted the respective circulars. Moreover, no instructions on the subject are available for many of the services. At the end, we opine that it would be better, if clear guidelines in this regard are incorporated either in the Act or in the Rules, so as to avoid all confusions.