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Dear Professional Colleague,

No Service tax on sharing of resources and cost/ expenses with the Group Companies

We are sharing with you an important judgement of the Hon'ble CESTAT of Mumbai in the case of ***Reliance ADA Group Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai-IV [2016 (3) TMI (810) - CESTAT MUMBAI]*** on the following issue:

Issue:

Whether the assessee acting merely as a trustee to incur the expenses on behalf of the participating Group Companies on cost sharing agreement will be exigible to Service tax?

Facts & Background:

Reliance ADA Group Pvt. Ltd. (**"the Appellant"**), a Guarantee Company under Section 27 of erstwhile Companies Act, 1956, entered into a contractual agreement with its participating Group Companies (**"the Group Companies"**) for procuring certain services on their behalf on cost sharing arrangement basis along with fixed remuneration for making such arrangement. The expenses incurred by the Appellant in procuring the services on behalf of the Group Companies would separately be charged to and reimbursed by the Group Companies.

Revenue's contention: The services rendered by the Appellant to the Group Companies is classifiable under 'Business Support Services' as defined under Section 65(105) (zzzq) of the Finance Act, 1994 (**"the Finance Act"**). Further, the Appellant has failed to satisfy the condition no. (iii) and (iv) of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 (**"the Service Tax Valuation Rules"**) as the Appellant himself is making arrangement for procuring the services and liable to pay to third party and moreover, the Appellant has recovered from the Group Companies not only such amount as has been paid to the third party but also an additional amount on account of administrative expenses, salary etc., as per the contractual agreement.

Appellant's contention: They run on 'No profit, No loss' basis and only recovering the cost of expenses incurred from the Group Companies and not receiving any fee, which would alone be liable to Service tax, if charged or received. Thus, in respect of the procurement of services, the Appellant has acted only in the capacity of 'pure agent' and will not be covered under 'Business Support Services'.

Being aggrieved, the Appellant preferred an appeal before the Hon'ble CESTAT, Mumbai.

Held:

The Hon'ble CESTAT, Mumbai held that reimbursement of the cost of obtaining and employing resources/certain expenses incurred by the Appellant on the behalf of the Group

Companies cannot be regarded as consideration flowing to the Appellant towards the taxable service provided by the Appellant rather the receipts are towards the reimbursements of the cost/expenses incurred by the assessee in terms of the cost sharing agreement with the Group Companies. Further, the activity of incurring expenses as service is not in the nature of outsourced activity as contemplated in the definition of 'Business Support Services'.

In this regard, the Hon'ble CESTAT also relied upon the various Circulars issued by the CBEC i.e. Circular under F. No. B 43/1/97/dated June 6, 1997, etc. and the following judicial pronouncements wherein it was held that reimbursement of expenses so recovered by the assessee is not leviable to Service tax:

- ***JM Financial Services Pvt Ltd. Vs. Commissioner of Services Tax [2014 (36) STR 151];***
- ***Tata Technologies Limited Vs. CCE, Pune [2007 (8) STR 358];***
- ***Kumar Beheray Rathi Vs. Commissioner of Central Excise, Pune [2014 (34) STR 139];***
- ***Intercontinental Consultants and Technocrats Pvt. Ltd. Vs. Unionof India [2012-TIOL-966-HC-DEL-ST];***
- ***Pharmalinks Agency (I) Pvt. Ltd. Vs CCE [2015 (37) STR 305].***

Hence, it was held that no Service tax is exigible as the Appellant completely satisfies the conditions of a 'pure agent' as set out in Rule 5(2) of the Service Tax Valuation Rules.

Our Comments:

It is to be noted that effective from May 14, 2015, definition of the term 'Consideration' under the Finance Act has undergone changes vide the Finance Act, 2015 and thereby including in its scope any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing a taxable service. Thus, one has to apply the provisions of Rule 5(2) of the Service Tax Valuation Rules in consonance with the substituted Explanation (a)(ii) to Section 67 of the Finance Act. Accordingly, only those expenses, which a service recipient is duty bound to pay but which have been paid by the service provider to the third party on behalf of the service recipient will qualify for benefit under Rule 5(2) of the Service Tax Valuation Rules provided all other conditions specified therein are satisfied.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

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