

BUSINESS SUPPORT SERVICE – A STUDY

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Business Support Service is one of the more important and relevant categories under service tax which are being taxed at present. This category was introduced with effect from 01.05.06. The main intention in introducing this category was to tax those services relevant for one's business or commerce which are outsourced to another entity. One of the important points to be remembered here is that in order to tax the outsourced activity, the service should have been provided in relation to the service receiver's business or commerce. This is one category which would be relevant for all those entities which handle outsourced activities and therefore is very relevant to a BPO. Assesseees should however note that the definition of the service does not restrict the scope of this heading to services mentioned therein as there can be various services provided in relation to business or commerce. The services specifically finding a mention in the definition are only intended to provide clarity to the assessee rather than restricting the scope of the definition itself. i.e. in other words, the definition is not at all exhaustive and this has been made clear by the Circular DOF 334/4/2006 TRU dated 28.02.2006. Assesseees seeking to classify their services under this heading are also advised to find out whether there is any other category of taxable service which provides a more appropriate description of the service concerned as the service involved might have to be classified under such other heading if one goes by the principles laid down in Section 65A a view which has also been upheld by the High Court of Punjab and Haryana in Dr Lal Path Labs (P) Ltd Vs CCE Ludhiana (2007 (09) LCX0011).

A critical question for professionals could be whether services provided to professionals would fall under this head. In the opinion of the paper writers this may require judicial examination as conflicting judgments under other Acts exist.

Definitions

As per Section 65(105)(zzzq) of Chapter V of Finance Act 1994 as amended from time to time, taxable service means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner.

The term "business" has not been defined for the purposes of this clause and one would have to go by the meaning assigned by a standard dictionary. As per Random House Webster's Dictionary, the term "business" means an occupation, profession or trade. "Commerce" has been defined as an interchange of goods or commodities between different countries or

between areas of the same country. Thus in order to render the service provided liable to service tax as a taxable service under this clause, the service should be one which supports the service receiver's business or commerce. Where the service cannot be related to his business or commerce, the service provided, in our humble view, cannot be brought under this heading.

As per section 65(104c), "support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operation assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

For the purposes of this clause, "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security. The term "infrastructure" has been defined by Random House Webster's Dictionary as the basic underlying framework or features of a system or organisation.

Case Laws

In M.P. Power Transmission Co. Ltd Vs CCE Bhopal (2008 (06) LCX 0150-DEL), the arranging of transmission of electrical energy in such a way that transmission losses were minimised and the energy of suitable voltage reached the distribution points of the company from where the electricity was sold to various consumers, was held to be liable under business support services. The benefit of Circular 89/07/06 dated 18.12.2006 ST regarding inapplicability of service tax to activities performed in public interest and under statute was also denied.

In Mr SR Kalyanakrishnan & Sree Krishna Mandiram Vs CCE Cochin (2007-TIOL-1914-CESTAT-Bang), the service of verification of correctness, fairness and authenticity of information furnished by those seeking loan from ICICI bank was distinguished from activity of promoting the client's business and held to be liable under Business Support Service and taxable from 01.05.06 and not under Business Auxiliary Service and therefore not taxed for the service provided prior to 01.05.06

In Jaded Siddappa & Co Vs CCE Mangalore (2007 (09) LCX 0201 Tri-Bang), the activity of

outsourcing of meter reading, billing and ledger posting was held not to fall within the ambit of professional activity of Chartered Accountants and was held to be classifiable under business support service. Thus, in other words, just because support services happen to be provided by professionals, the same would not be assessable as a professional service unless the professional is really called upon to bring in his professional expertise in carrying out or performing the service.

In Fifth Avenue Vs Commissioner Service Tax Chennai (2008 (03) LCX0190 Tri-Chennai), the service of evaluating prospective customer, processing of purchase order, customer management, processing of transactions, information and tracking delivery schedule, operational assistance for marketing, formulation of customer service and packing policies, managing distribution logistics and other coordination services in India was held to be classifiable under business support service.

BAS Vs BSS

Assesseees should note the distinction between the two categories being discussed here. Compared to the Business Support Service category, the category of Business Auxiliary Service is more specific seeking to tax specified activities/services. There can be confusion at times where the services provided are those such as billing, issue or collection or recovery of cheques, payments or maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relations service, management or supervision as these too are services in relation to business or commerce. But one essential difference between the two categories being discussed here is that while business support service seeks to tax outsourced service in relation to business or commerce, business auxiliary service would apply to those services which are ***incidental or auxiliary*** to services of promotion or marketing of goods or service provided by client, customer care service provided on behalf of the client, procurement of goods or services which are inputs for the client, production or processing of goods for or on behalf of the client or provision of service on behalf of the client.

One should also see whether services are provided to a client or on behalf of the client to a third party. Where the services covered here are provided on behalf of the client to a third party, the same would be liable under business auxiliary service as services provided on behalf of the client.

BSS Vs Renting of Immovable property service

Business Support Service also includes infrastructural support services within its purview. At the same time assesses should note the presence of another service category and that is renting of immovable property service which was amended recently to include the service of letting out space temporarily. Where space is let out temporarily without transferring the right as to ownership and control over such space to the service receiver, the same would be liable under the category renting of immovable property. Now a situation can arise say, where space is provided in an office to an entity to either set up its counter for promoting its business/service or even a help desk to assist the employees of the organisation. In such a scenario one would have to scan the agreement if it is available, to understand the exact nature of service involved. In order to tax the service under BSS, the setting up of the counter or help desk should qualify as a service which would support or supports the organisation's business or commerce. Sometimes answering this question could prove to be tricky where the service may not support the organisation's business directly though it may help its employees as in case of the help desk mentioned above. While this posed problems earlier, the same in the views of the paper writer's should not pose problems now as even temporary letting out of space without any personnel is liable to service tax under renting of immovable property service. However where personnel are also provided the same constitutes infrastructure support service and would be taxed under business support service.

BSS Vs Consulting Engineer Service Vs Business & Management Consultancy

Sometimes advice as well as services which support service receiver's business, may be provided by the service provider. In such cases, the service agreements would have to be reviewed to see whether the service is really a composite one or the services involved can be identified separately. In case of composite services, the service would be classified on the basis of the service which gives it the essential character. Here it would be worthwhile to note the circumstances under which advice, consultancy or technical assistance can fall under consulting engineer's category. Such advice, consultancy or technical assistance should be provided by a consulting engineer i.e. professionally qualified engineer or a body corporate or firm providing such service, in one or more disciplines of engineering.

Sometimes we may also have a scenario where advice in relation to management is given by the service provider. In that case, we would have to look at another taxable service namely, management or business consultant's service. Once again in case of composite service involving advice as well as services supporting business, the classification would have to be on the basis of the service which gives the same its essential character. Here one would have to distinguish between services in relation to management and those which merely support the

business. Services which enable the service receiver to effectively manage or organise his business can be said to fall under management or business consultant's service.

BSS Vs Mailing List compilation and Mailing Services

Assessee should note that where the services are provided in relation to mailing list compilation and mailing, the said service would have to be seen in light of the taxable service of mailing list compilation and mailing service. For this, the assessee would have to analyse whether the service is one of pure mailing or whether it is part of a larger bouquet of services. In case of the latter, the classification would have to be done as explained earlier i.e. using the essential character test. Where the service is only in relation to compiling and providing list of name and address and any other information from any source or merely sending document, information, goods or any other material in a packet by whatever name called, by addressing, stuffing, sealing, metering or mailing, the same would be classifiable under mailing list compilation and mailing service.

BSS Vs Development and Supply of Content

The activity of telemarketing i.e. selling or advertising over telephone would be liable under BSS. However there can be a scenario where a service provider develops the content for such advertising and then takes up the activity of telemarketing as well. When the essential character of the service or arrangement is one of telemarketing, the same would be liable under BSS in our view. But where the service is essentially one of development and supply of content, the same would have to be seen under another heading. Services in relation to development of supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services would be taxed under the separate heading development and supply of content service.

BSS Vs Manpower Recruitment or Supply agency's service

Another aspect which merits attention is the manner in which support services of business or commerce are obtained. The analysis of Service level Agreements along with the Statement of Work (for examining what are the deliverables) in most of the cases where processes are outsourced, would assume significance as there have been cases where the agreements were essentially for supply of manpower though the activities undertaken were intended to support the service receiver's business. Where the agreement is one for supply of manpower where the personnel continue to be the service provider's employees but work on support services to service receiver's business under receiver's supervision would be liable under manpower

recruitment or supply agency's service. In this case the service is merely of supplying people with the requisite skill / qualifications. Such supply may be temporary or otherwise. This would have some implications as manpower recruitment or supply agency's services has been in existence for quite sometime now though BSS was introduced only with effect from 01.05.06.

BSS Vs On-line information and Database Access and/or Retrieval service

Support services of business or commerce may also involve usage of computer network by the service provider, for the purpose of sending/receiving information to/from the service receiver. As per the views of the paper writer's, one would have to see whether such usage of computer network is only incidental to carrying out the support services for business or commerce. This would have to be evident from a reading of the agreement. Where the main intention is to carry out the activities laid down under this category, it should be possible to hold the service provided as liable under business support service though revenue may try to classify the same under on-line information and data base access or retrieval service.

Sale of goods

Service providers may at times end up transferring property in goods during the course of providing taxable service. Where this happens, the benefit of notification 12/2003 ST which provides an abatement for the value of goods and materials sold, can be availed by the service provider where he charges VAT/CST on the value such goods sold.

Reimbursement of expenses incurred while providing the service

The service provider should note that even the expenses incurred by him/her for the purpose of providing the taxable service and sought to be recovered from the service receiver, would have to be included in the gross amount charged for the service for the purpose of charging service tax. This is as per Rule 5 of Service Tax (Determination of Value) Rules 2006. But where the service provider incurs the expenses as a pure agent of the service receiver and necessary disclosures are made in the agreement, such expenses reimbursed may be kept out of service tax levy.

Criterion for import or export of service

Service providers would have to note that business support service falls under the recipient based criterion for the purpose of determining whether the taxable service is received in India from abroad or exported out of India.

Conclusion

Service providers who happen to provide support service or business or commerce are advised to review the nature of service they provide as well as the activities involved. This is due to the fact that the lack of clarity in the matter would increase chances of improper classification of the service which can possibly result in an ultimate demand from the department of amount, interest and penalties which may not have been collected from the service receiver.