

ਪੰਜਾਬ ਰਾਜ ਪਾਵਰ ਕਾਰਪੋਰੇਸ਼ਨ ਲਿਮਿਟਿਡ
ਦਫਤਰ: ਵਿੱਤ ਸਲਾਹਕਾਰ/ਐਫ.ਆਰ ਭਾਗ
ਰਜਿਸਟਰਡ ਆਫਿਸ, ਪੀ.ਐਸ.ਈ.ਬੀ ਦੀ ਮਾਲ, ਪਟਿਆਲਾ।

ਵੱਲ


ਨਿਗਰਾਨ ਇੰਜੀਨੀਅਰ/ਆਈ.ਟੀ
ਪੀ.ਐਸ.ਪੀ.ਸੀ.ਐਲ, ਪਟਿਆਲਾ

ਮੀਮੋ ਨੰ: ੫੫੭੦ ਮਿਤੀ ੨੬/੩/੨੦੨੩

ਵਿਸ਼ਾ: Legal opinion in respect of service tax.

ਉਪਰੋਕਤ ਦੇ ਸਬੰਧ ਵਿਚ ਆਪ ਜੀ ਨੂੰ ਸਰਵਿਸ ਟੈਕਸ ਦੇ ਸਬੰਧ ਵਿਚ ਸ਼੍ਰੀ
ਵਿਕਰਾਂਤ ਕਕਰੀਆ ਐਡਵੋਕੇਟ ਕੋਲੋਂ ਲਿਆ ਲੀਗਲ ਓਪੀਨੀਅਨ ਪੀ.ਐਸ.ਪੀ.ਸੀ.ਐਲ ਦੀ
ਵੈਬਸਾਈਟ ਤੇ ਅੱਪਲੋਡ ਕਰਨ ਲਈ ਭੇਜਿਆ ਜਾਂਦਾ ਹੈ।

ਨੱਥੀ ਉਪਰੋਕਤ ਅਨੁਸਾਰ


ਲੇਖਾ ਮਹਸੂਰ/ਐਫ.ਆਰ
ਪੀ.ਐਸ.ਪੀ.ਸੀ.ਐਲ, ਪਟਿਆਲਾ।

18-03-2013

To

The Financial Advisor,
Punjab State Power Corporation Ltd.,
Patiala

Sir,

Kindly refer to our telephonic conversation and meeting of the officials of your organization wherein legal opinion had been sought in respect of certain aspects with regard to service tax.

2. It is to be mentioned that as regards the first query with regard to the payment of service tax on the taxi services availed by the officials of the Corporation, it may be pointed out that Rent-a-Cab Services have been covered under the Reverse Charge Mechanism. The Rent-a-Cab Service provided by way of renting of motor vehicle provided to a passenger is not covered under the reverse charge mechanism if the person providing the said service is an individual or a partnership firm. The service tax in respect of services provided or agreed to be provided by way of renting of motor vehicle designed to carry passengers on abated value to any person who is not engaged in similar line of business has to be paid on 100% of value by the service recipient and in respect of service provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in the similar line of business, the amount of service tax payable by the service recipient is 40% and the balance service tax of 60% is to be paid by the person providing the service.

3. As regards the query with respect to payment of service tax in respect of contractor engaged by the Corporation or field formation, it is to be mentioned that the service recipient i.e. your Corporation in this case is liable to pay the tax only on the category of service which falls under the category of 'Works Contract Service'. It may be made clear at this point that the Works Contract Service is applicable only in case where there is agreement both for the supply of material as well as providing


Accounts Officer/FR,
PSPCL, PATIALA.

of service. In case, there is purely a labour contract i.e. merely services are provided and no material sale is involved, then the same would not be covered under the category of 'Work Contract Service' and no liability to pay service tax on such a service by the service recipient would arise. However, in case where there is a liability under the category of Works Contract under the Sales Tax and both the aspects of sale of material as well as service is involved, then the service recipient is liable to pay service tax on 50% of the service portion in respect of execution of a work contract. It may be made clear at this point that the works contract only means a contract wherein transfer of property in goods is involved in the execution of such a contract and not otherwise. If the same falls under the category of works contract, then the liability to pay service tax is both on the service provider as well as service recipient in the ratio of 50:50. However, where the contract is in respect of labour job without the sale of material, then the service recipient is not liable to pay any service tax at all and the liability to pay service tax will be that of the service provider.

4. Thus, it is made clear that the reverse charge mechanism is applicable only in cases where the transfer of property as well as providing of services is involved in the same contract. Moreover, the reverse charge mechanism in the present case is also applicable in case where the service is provided by an entity other than a Company and not otherwise.

5. As regards the supply of manpower, it is to be mentioned that the service recipient has a liability to pay service tax on 75% of the total value of service if the service is provided by a person other than a company, but it may be kept in mind that the manpower service means service where the manpower is supplied to a person and he has to get the work done from the manpower. If there is contract for a specific work to be done and even if the same categorically mentions the number of persons required for the execution of that work, then also the same would not be covered under the category of manpower supply service and hence the service recipient would not be liable to pay the service tax. The reverse charge is applicable only in case where the service recipient receives the manpower and gets the work


Accounts Officer/FR,
PSPCL, PATIALA.

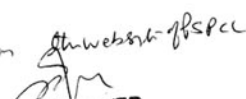
done on his own will and pays the amount on per person basis. If the contract is for a specific job irrespective of the number of persons, then it would not be covered under supply of manpower service and hence reverse charge mechanism would not be applicable.

6. As regards your query that in certain cases with effect from 1-07-2012 wherein the Corporation was liable to pay service tax on 50% of the value under reverse charge mechanism but the service tax on the entire 100% of the value had been paid by the contractor himself, it is to be mentioned that the procedure adopted by the contractor is wrong and the Department may object to it, but, at the same time, it may be suggested that you should not, at this stage, again pay the service tax on the 50% of the value because it would amount to double payment of service tax. Even though the procedure adopted by the contractor is incorrect, yet if the Department objects to the same at any stage, the Corporation can take a stand that since the tax on the entire amount already stands paid, thus, the same should not be again recovered from the Corporation. Even though legally, the payment of service tax by the contractor on 100% value is incorrect, yet the same should not again be paid in order to avoid double payment and the matter can be agitated if the Department objects to it at any stage. You should keep the proof of payment of the service tax on 100% of the value with you so that the same can be shown to the Department if any dispute arises in future.

Hope you would find it in order.

Thanking you,

Yours faithfully,
(Vikrant Kackria) Advocate

Reupload it on the website of PSPCL

 Accounts Officer/FR,
 PSPCL, PATIALA.


 Accounts Officer/FR,
 PSPCL, PATIALA.