Question 1

Briefly explain as to how and when the amendments made in Finance Bill, in respect of service tax matters come into force?

Answer

Amendments made by the Finance Bill, in respect of service tax matters, come into force from the date of enactment of the Finance Bill i.e., the date on which the Finance Bill receives the assent of the President of India. However, wherever it is specifically provided so in the Finance Bill, certain amendments become effective from a date to be notified after the enactment of the Finance Bill.

Question 2

With reference to the provision of Finance Act, 1994, examine whether service tax is leviable in the following situations:

(i) Services provided in a vessel stationed at a distance of 10 nautical miles from the Indian land mass.

(ii) Services provided in a vessel stationed at a distance of 54 nautical miles from Indian land mass in Exclusive Economic Zone (EEZ) of India for carrying out fishing operations.

(iii) Services provided in a vessel stationed at a distance of 54 nautical miles from Indian land mass in Exclusive Economic Zone (EEZ) of India for extraction of mineral oil.

Answer

(i) Yes. Levy of service tax extends to whole of India except Jammu and Kashmir and India means, inter alia, its territorial waters which extend upto 12 nautical miles from Indian land mass. Therefore, services provided in the vessel stationed at a distance of 10 nautical miles from the Indian land mass i.e., in Indian territorial waters will be liable to service tax.

(ii) No. Levy of service tax extends to whole of India except Jammu and Kashmir and India means, inter alia, the vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof. Therefore, though the vessel is stationed at a distance of 54 nautical miles from Indian land mass in Exclusive Economic Zone...
2.2 Indirect Taxes

(EEZ) of India, services provided thereat will not be liable to service tax as the vessel is used for carrying out fishing operations.

(iii) Yes. In this case, since the vessel is used for one of the designated purposes i.e., for extraction of mineral oil, services provided thereat will be liable to service tax.

Question 3

With reference to service tax law as contained in Finance Act, 1994, discuss whether any ‘consideration’ is involved in following cases:

(i) Donations given to political parties.

(ii) Gifts received from friends at the time of wedding.

(iii) Grant given to a researcher to carry out a research in a particular field.

(iv) Grant given to a researcher to carry out any research of his choice. However, the researcher will have to provide IPR rights of the outcome of such research activity.

Answer

‘Consideration’ means everything received or recoverable in return for a provision of service. It includes monetary payment and any consideration of non-monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory and taxable territory. In the backdrop of this definition, given situations are examined hereunder:

(i) No, as the donation is not given in return for provision of any service.

(ii) No, as in this case also gifts are given out of free will and not in lieu of any provision of service.

(iii) Yes, as there is a direction to carry out a specific activity, i.e., a research in a particular field in this case.

(iv) Yes. Though grants given for a research where the researcher is under no obligation to carry out a particular research is not a consideration, grant given with counter obligation on the researcher to provide IPR rights on the outcome of research undertaken with the help of such grants is a consideration for the provision of service of research.

Question 4

With reference to service tax law as contained in Finance Act, 1994, discuss whether any ‘consideration’ is involved in following cases:

(i) Donations given to a charitable trust with the condition that such trust would display the name of the donor in a fair organized by it.

(ii) Fine imposed by Traffic Police on over speeding vehicles on an expressway.

(iii) Services are provided by A to B. However, payment for the services is made by C, a debtor of B, on the instructions of B.
Answer

‘Consideration’ means everything received or recoverable in return for a provision of service. It includes monetary payment and any consideration of non-monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory and taxable territory. In the backdrop of this definition, given situations are examined hereunder:

(i) Yes. Donations to a charitable organization are not consideration unless charity is obligated to provide something in return. Since in this case, donations are given to the charitable trust with the condition that such trust would display the name of the donor in a fair organized by it, the donations would amount to consideration.

(ii) No. Since fines and penalties are legal consequences of a person’s actions and not a consideration for any activity, fine imposed by Traffic Police on over speeding vehicles on an expressway is not a consideration.

(iii) Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. Since in the given case, payment for the service is made by C, a debtor of service receiver B, on the instructions of B, the payment will be treated as consideration of service provided by A to B.

Question 5

XYZ & Co. is a consultancy firm based in New Delhi. It has two branch offices at Mumbai and Singapore. Services are provided by Mumbai branch to Head Office at New Delhi and by Head Office at New Delhi to Singapore branch. Explain which of the activities will constitute ‘service’ under service tax law.

Answer

As per section 65B(44) of Finance Act, 1994, a service is an activity carried out by one person for another person in lieu of a consideration. Further, Explanation 3 to section 65B(44) provides inter alia that an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. Also, as per explanation 4 to the said section, a person carrying on a business through a branch in any territory is treated as having an establishment in that territory.

Therefore, services provided by Mumbai branch to Head Office at New Delhi will not be ‘service’ in terms of section 65B(44) since both the establishments namely, Branch office and Head office are located in the taxable territory and are thus, one and the same person. However, when services are provided by Head Office at New Delhi to Singapore branch (located in non-taxable territory), the two establishments are treated as establishments of distinct persons and thus, the services provided in this case will constitute ‘service’ under service tax law.
2.4 Indirect Taxes

Question 6

Pragyan has received a sum of ₹ 5,00,000 from his employer on premature termination of his contract of employment. Pragyan needs your advice as to whether such receipts are liable to service tax.

Answer

No, Pragyan need not pay any service tax on such amount. Amounts paid by the employer to the employee for premature termination of a contract of employment are treated as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax.

Question 7

Mr. A boarded Rajdhani Express (fully AC train) from Kanpur on July 5, 20XX and disembarked at New Delhi. He hired a car from a local cab operator for the whole day on a lumpsum consideration and visited Delhi’s historical monuments. In the night, he took the Metro to International Airport and boarded a flight to Mumbai. At Mumbai Airport, he used a radio taxi for going to his Hotel. Mr. A returned to Kanpur from a different train, Pushpak Express in sleeper class.

With reference to the provisions of Finance Act, 1994, examine the leviability of service tax on the various modes of travel undertaken by Mr. A.

Answer

As per section 66D of Finance Act, 1994, service of transportation of passengers, with or without accompanied belongings, by inter alia-

(i) railways in a class other than an air conditioned coach;
(ii) metro, monorail or tramway;
(iii) metered cabs or auto rickshaws.

are included in the negative list of services.

Therefore in the given case, service tax leviability on the various passenger transportation services used by Mr. A will be determined as under:

(i) Rail travel in AC train – Not covered under negative list and thus, liable to service tax.
(ii) Travel in a car rented for the whole day on a lumpsum consideration – Since travel by only metered cabs is covered in negative list, travel in a car rented for the whole day on a lumpsum consideration will be liable to service tax.
(iii) Metro travel – Covered in negative list and hence, not taxable.
(iv) Air travel – Not covered under negative list and thus, liable to service tax.
(v) Radio taxi travel – Not covered in negative list and thus, liable to service tax.
(vi) Rail travel in sleeper class - Covered in negative list and hence, not taxable.

Question 8

With reference to the provisions of Finance Act, 1994, examine the validity of following statements:

(i) Services provided to and by Reserve Bank of India are covered in negative list of services.

(ii) Pisciculture (breeding of fish) is not liable to service tax as the same is covered under negative list of services.

Answer

(i) Invalid. Only services provided by Reserve bank of India, and not to Reserve Bank of India are covered in negative list of services.

(ii) Valid. Services relating to agriculture are covered in negative list of services. Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. Therefore, breeding of fish, being agriculture, would be covered under negative list of services and thus, be not liable to service tax.

Question 9

(i) "Not all the services provided by an employee to the employers are outside the ambit of service". Explain the statement with reference to service tax law.

(ii) Discuss whether the following services are liable to service tax:

   (1) Services provided on contract basis by a person to another.

   (2) Services provided by a casual worker to employer who gives wages on daily basis to the workers.

Answer

(i) "Not all the services provided by an employee to the employer are outside the ambit of services". The significance of this statement is that services that are provided by the employee to the employer in the course of employment are only outside the ambit of definition of service as per section 65B(44) of the Finance Act, 1994. Services provided outside the ambit of employment for a consideration would be a service.

(ii) As per section 65B(44) of the Finance Act, 1994, service does not include a provision of service by an employee to the employer in the course of or in relation to his employment. Service provided on contract basis by a person to another are not provided in the course of employment and hence, is a service in terms of section 65B(44) of the Finance Act, 1994. Therefore, such services would be liable to tax.
2.6 Indirect Taxes

(2) Services provided by a casual worker to employer who gives wages on daily basis to the workers are services provided by the worker in the course of employment which comes under the exclusions of definition of service under section 65B(44) of the Finance Act, 1994. Hence, such services are not liable to service tax.

Question 10

BTR Association, an unincorporated body of individuals, provided warehousing services to Mr. Raman for ₹ 7,50,000. BTR Association is of the view that since it is not a natural person, warehousing service provided by it will not be a ‘service’ in terms of section 65B(44) of the Finance Act, 1994.

Examine whether the view taken by BTR Association is valid in law.

Answer

The view taken by BTR Association is not valid in law. As per section 65B(44) of the Finance Act, 1994, service means, *inter alia*, any activity for consideration carried out by a person for another. The term ‘person’ is not restricted to a natural person. The definition of person under section 65B(37), includes, *inter alia*, body of individuals, whether incorporated or not.

Thus, BTR Association is a person as it is a body of individuals and services provided by it would come under purview of definition of ‘service’ under section 65B(44) of the Finance Act, 1994.

Question 11

Shyam has given his tempos on hire to Mohan Brothers for transportation of food stuff for ₹ 14,00,000. He has also transferred the right to use such tempos to Mohan Brothers. Shyam has not paid any service tax on the consideration so received. Discuss whether Shyam is liable to pay service tax on the said transaction.

Answer

No, Shyam is not liable to pay service tax on the transaction entered into by him with Mohan Brothers. The transfer of tempos by way of hiring along with right to use is a deemed sales as per article 366(29A) of the Constitution of India. Charging section 66B of the Finance Act, 1994 stipulates that service tax is leviable on the value of all ‘services’ provided by one person to another. However, transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of article 366(29A) of the Constitution is specifically excluded from the definition of ‘service’ under section 65B(44) of the Finance Act, 1994.

Therefore, the transaction entered into by Shyam with Mohan Brothers is not chargeable to service tax. Instead, VAT is leviable on the same.

Question 12

State whether the following services are covered in negative list of services under section 66D of Finance Act, 1994:
(i) Service provided by way of supply of farm labour relating to agriculture.
(ii) Services by way of renting of residential dwellings for use as residence.
(iii) Services of funeral, burial, crematorium or mortuary and transportation of the deceased.
(iv) Service of transportation of passengers with or without accompanied belongings, by Railways in an air conditioned coach.
(v) Services by way of transportation of goods by road by a goods transportation agency.
(vi) Selling of space or time slots for advertisement broadcast by FM Radio.

Answer

(i) Yes. Service provided by way of supply of farm labour relating to agriculture is covered in the negative list of services.
(ii) Yes. Services by way of renting of residential dwellings for use as residence are covered in the negative list of services.
(iii) Yes. Services of funeral, burial, crematorium or mortuary and transportation of the deceased are covered in the negative list of services.
(iv) No. Service of transportation of passengers with or without accompanied belongings, by Railways in a class other than first class; or an air conditioned coach is covered in the negative list of services. Thus, service of transportation of passengers with or without accompanied belongings, by Railways in an air conditioned coach is not covered in the negative list of services.
(v) No. Services by way of transportation of goods by road, except the services of a goods transportation agency or a courier agency are covered in the negative list of services. Thus, services by way of transportation of goods by road by a goods transportation agency are not covered in the negative list of services.
(vi) No. Only selling of space for advertisements in print media is covered in the negative list of services. Thus, selling of space or time slots for advertisement broadcast by FM Radio will not be covered in the negative list of services.

Question 13

With reference to the provisions of service tax law, briefly examine the service tax implications in the following independent cases:-

(a) Miss Chaitali is working as an Assistant Manager in Success Software Limited (SSL) since 01.04.2014. One of the clause of her employment contract provides that she would be given one month notice by SSL in the event of termination of her services by SSL. However, she has been terminated all of a sudden on 31.3.2016 on account of her poor performance. She was paid termination compensation of ₹1,25,000.
2.8 Indirect Taxes

(b) Mr. Deepak Jindal has entered into a contract with High Technologies Ltd. for rendering legal consultancy services for one year on a lumpsum fee of ₹1,25,000 per month.

Answer

(a) The compensation for termination of employment will not attract service tax as it is under the terms of employment. Such amount paid by the employer to the employee for premature termination of contract of employment is treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amount so paid would not be chargeable to service tax.

(b) As per section 65B(44) of the Finance Act, 1994, only services provided by an employee to the employer are outside the ambit of services under service tax law; services provided outside the ambit of employment for a consideration would be a taxable service liable to service tax. In the present case, Mr. Deepak Jindal is hired as a legal consultant, and hence Mr. Deepak Jindal is liable to pay service tax.

Further, Mr. Deepak Jindal has to register under service tax law, make quarterly payment of service tax (since he is an individual) and file half yearly returns for the half year ending on 30th September and 31st March.

Exercise

1. Write a brief note on Constitutional provisions relating to service tax.

2. Enlist the sources of service tax law and explain each one of them.

3. What do you mean by selective and comprehensive coverage of services for the purpose of service tax? Which system is being adopted in India?

4. Write a note on administration of service tax.

5. Write a short note on the nature of professional services that can be rendered by a Chartered Accountant in the field of service tax.

6. What is the extent and application of the provisions of Finance Act, 1994 relating to service tax?

7. Define service and explain the salient features of the definition.


9. What is negative list of services? Explain any five of the services covered therein.