



**TAX
ALERT**

***Taxability of Services
provided to an
overseas
manufacturer***



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Issue: Whether customer care Service, warranty Services, installation and commissioning Services rendered to the customers in India in relation to product of overseas manufacturer is liable to Service Tax under Reverse Charge

Facts: The Appellant is engaged in the business of promoting, marketing, canvassing, after sales Service, customer care Services for the medical equipments manufactured by M/s Viasys International Corporation and receives commission towards such service.

Revenue contention: The appellant is liable to Service Tax, on commission received from the aforesaid Company under Reverse charge mechanism.

Appellant contention: The appellant contended that it is the place where the Services have been rendered is of significance. The Services will be taxable only if they are provided within India. Service Tax is a destination based consumption tax and hence not chargeable on export of Services.

Tribunal's Observation: Hon'ble Mumbai Tribunal observed that the appellant has rendered service to the overseas manufacturer on whom the service tax liability does not arise. Further, the appellant cannot be made liable to pay service tax under reverse charge mechanism since the service is being consumed by a person not in India. The Tribunal also placed reliance on the judgment of Bombay High Court in the case of SGS India Pvt. Ltd. where the Court had referred Circular no. 56/5/2003-ST dated 25.04.2003 which had clarified that export of service would remain tax free. The Court also held that the Hon'ble Supreme Court had taken the view that service tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes on non commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country.

On the above backdrop, the Hon'ble Mumbai Tribunal set aside the order and allowed the appeal.

However, with the introduction of Place of Provision of Services Rules, 2012 (rules for determination of place where services are provided or deemed to be provided or agreed to be provided), the question arises that whether the service provided by the Appellant is covered under the "intermediary service" or not. Service provided by an intermediary is governed by Rule 9 of Place of Provision Rule which provides that the place of provision of service would be the location of the service provider and is inter alia applicable to intermediary services.

Hence, in case the service provided by the Appellant is covered by the definition of intermediary, the appellant would be liable to pay service tax.