

# **SERVICE TAX SEMINAR**

**ORGANISED BY :  
DIRECT TAX PROFESSIONAL  
ASSOCIATION**

**ON 23-11-2005**

# NEW TAXABLE SERVICES

EFFECTIVE FROM  
10-09-2004

**AIRPORT SERVICES**

**BUSINESS EXHIBITION SERVICES**

**AIR TRANSPORT SERVICES  
(AIR CARGO)**

**SURVEY & EXPLORATION OF MINERAL  
SERVICES**

**OPINION POLL SERVICES**

**INTELLECTUAL PROPERTY SERVICES**

**FORWARD CONTRACT SERVICES**

**PANDAL & SHAMIANA SERVICES**

**OUTDOOR CATERING SERVICES**

**TV/RADIO PROGRAMME  
PRODUCTION SERVICES**

**CONSTRUCTION SERVICES**

**TRAVEL AGENT'S SERVICES**

# BUSINESS AUXILIARY SERVICES

DEFINITION WIDENED W.E.F. 09-07-04

## **SECTION 65(105)(zzb)**

**TAXABLE SERVICE MEANS ANY SERVICE PROVIDED TO A CLIENT BY A COMMERCIAL CONCERN IN RELATION TO BUSINESS AUXILLIARY SERVICE.**

## **SECTION 65(19) DEFINES BUSINESS AUXILLIARY SERVICE AS**

**Any service in relation to :**

- (i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or**
- (ii) promotion or marketing of service provided by the client; or**
- (iii) any customer care service provided on behalf of the client; or**
- (iv) procurement of goods or services, which are inputs for the client; or**
- (v) production of goods on behalf of the client; or**
- (vi) provision of service on behalf of the client; or**

**(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,**

**and includes services as a commission agent, but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944**

***Explanation.* - For the removal of doubts, it is hereby declared that for the purposes of this clause, “information technology service” means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;**

**DOES SERVICES PROVIDED  
BY CHARTERED  
ACCOUNTANTS, SUCH AS  
PREPARING RETURNS,  
PETITIONS, SUBMISSIONS,  
DRAFTING OF APPEALS ETC..  
ON BEHALF OF THE CLIENT  
FALL UNDER THE CATEGORY  
OF BUSINESS AUXILIARY  
SERVICES ?**

**AS PER  
NOTIFICATION NO. 14/2004-SERVICE TAX  
DATED 10-09-2004**

**As regards category iv, v, vi & vii contained in  
definition of BAS**

**A Commercial concern other than a) factory,  
b) Company, c) partnership firm, d) Society,  
e) co-operative society, f) corporation and  
g) body corporate established under any law  
ARE EXEMPT**

**Services in relation to agriculture, printing,  
textile processing or education are also  
ARE ALSO EXEMPT**

**JOB WORK**

**ANY ACTIVITY THAT AMOUNTS TO  
“MANUFACTURE” WITHIN THE  
MEANING OF CLAUSE (f) OF  
SECTION 2 OF THE CENTRAL  
EXCISE ACT, 1944  
ARE EXEMPT**

**SUPREME COURT IN VARIOUS  
DECISIONS HAVE DECIDED AS  
TO WHETHER AN ACTIVITY  
AMOUNTS TO  
MANUFACTURE  
OR NOT**

**ACTIVITY AMOUNTS TO  
MANUFACTURE OR NOT  
MAY CHANGE AT  
VARIOUS LEVELS OF  
APPELLATE FORMS**

# INTELLECTUAL PROPERTY SERVICE

EFFECTIVE FROM 10-09-2004

SECTION 65(105)(zr)  
TAXABLE SERVICE

" ANY SERVICE PROVIDED TO ANY  
PERSON, BY THE HOLDER OF  
INTELLECTUAL PROPERTY RIGHT,  
IN RELATION TO INTELLECTUAL  
PROPERTY "

# INTELLECTUAL PROPERTY RIGHT

SECTION 65(55)(a)

" MEANS ANY RIGHT TO  
INTANGIBLE PROPERTY, NAMELY,  
TRADE MARKS, DESIGN, PATENTS  
OR ANY OTHER SIMILAR  
INTANGIBLE PROPERTY, UNDER  
ANY LAW FOR THE TIME BEING IN  
FORCE, BUT DOES NOT INCLUDE  
COPYRIGHT "

INTELLECTUAL PROPERTY SERVICE  
SECTION 65(55)(b)

" MEANS TRANSFERRING,  
WHETHER PERMANENTLY OR  
OTHERWISE OR PERMITTING THE  
USE OR ENJOYMENT OF ANY  
INTELLECTUAL PROPERTY RIGHT "

ROYALTY  
PAYMENT UNDER

TECHNICAL  
COLLOBORATION  
AGREEMENT

X International Ltd.  
Foreign Co.  
Holding Company  
Having no establishment in  
India, Being Holder  
of Intellectual Right

X India Limited  
100% subsidiary of  
foreign Company  
Being recipient of  
Intellectual Property  
service in India



Technical Support



WHO SHALL GET REGISTERED WITH ST ?

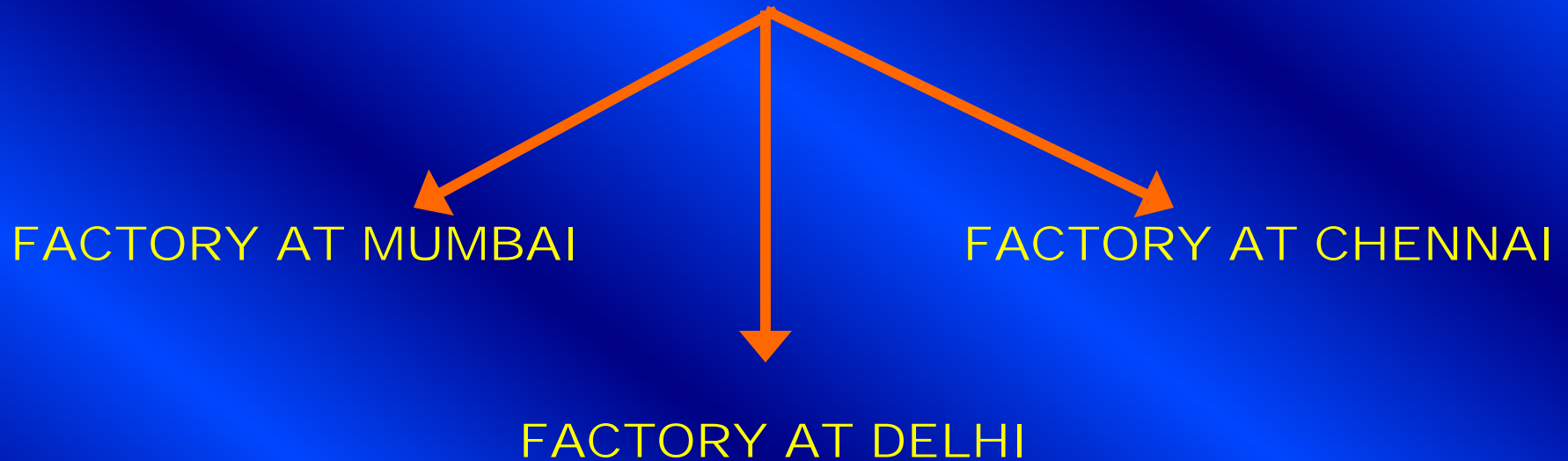
WHO SHALL PAY SERVICE TAX ?

HOW SERVICE TAX CREDIT MAY BE AVAILED ?

# X India Limited

HEAD OFFICE - KOLKATA

HO REGISTERED WITH SERVICE TAX DEPARTMENT &  
SERVICE TAX PAID ON ROYALTY FROM HO.



HOW SERVICE TAX CREDIT PAID BY  
HO. KOLKATA MAY BE UTILISED BY VARIOUS  
FACTORIES SITUATED IN INDIA ?

# INPUT SERVICE DISTRIBUTOR

A NEW CONCEPT INTRODUCED EFFECTIVE FROM 10-9-04

Section 2(m) of the CENVAT Credit Rules' 04 defines

" input service distributor "

" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be "

WHETHER  
HO. KOLKATA  
BEING OUTPUT SERVICE PROVIDER  
CAN  
DISTRIBUTE  
INPUT SERVICE TAX CREDIT  
TO ITS UNITS  
AS  
INPUT SERVICE DISTRIBUTOR

**LINE OF DEMARCATION  
BETWEEN  
OUTPUT SERVICE PROVIDER  
AND  
INPUT SERVICE DISTRIBUTOR**

**ISD – AS PER DEFINITION – RECEIVE INVOICE  
TOWARDS PURCHASE OF INPUT SERVICE AND  
ISSUES INVOICE FOR ITS DISTRIBUTION**

**OUTPUT SERVICE PROVIDER - WILL CONSUME OR  
USE SERVICES FOR PROVIDING OUTPUT SERVICES**

**AS PER SECTION 69 OF THE FINANCE ACT,  
1994 READ WITH RULE 4 OF THE SERVICE  
TAX RULES, ONLY PERSON LIABLE TO  
SERVICE TAX IS REQUIRED TO OBTAIN THE  
REGISTRATION.**

**THUS, INPUT SERVICE DISTRIBUTOR WHO  
ONLY RECEIVE AND DISTRIBUTE SERVICE  
TAX REQUIRED TO TAKE REGISTRATION ?**

**AS PER RULE 9(10) OF CENVAT CREDIT  
RULES'2004, AN INPUT SERVICE  
DISTRIBUTOR NEEDS TO FILE HALF YEARLY  
RETURN TO THE SUPERINTENDET**

# CONSTRUCTION SERVICES

**TAXABLE SERVICE**  
**SECTION 65(105)(zzq)**

**Any service provided to any person, by a commercial concern, in relation to construction service**

**As per Section 65 (30a) “construction service” means :**

- (a) construction of new building or civil structure or a part thereof; or**
- (b) repair, alteration or restoration of, or similar services in relation to, building or civil structure, which is :**
  - (i) used, or to be used, primarily for; or**
  - (ii) occupied, or to be occupied, primarily with; or**
  - (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam**

**CBE&C vide circular no. F.No.B2/8/2004-TRU dated 10-09-2004 has clarified that :**

**Estate builders who construct buildings/ civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/ contractors, the payment made to such contractor would be subjected to service tax.**

**Thus promoters who construct premises are charges his fees towards constructions are exempt from service tax net, however, corresponding fees paid to contractors attract service tax**

# VALUATION

Gross value charged by building contractor would attract service tax. The gross value includes material cost like cost of cement, steel, fittings & fixtures, tiles etc..

As per notification no.12/2003-ST dated 20-06-2003, abatement in respect of value of goods & material sold is available subject to proof in form of documentary evidence as regards such goods and materials

# **COMPOSITE CONTRACT**

**It means an all inclusive contract as regards goods, materials and services.**

**As per Notification 15/2004-ST dated 10-09-2004  
In such composite contract gross value for the purpose of calculating service tax shall be taken at 33% of composite contract value.**

**Provided that  
No CENVAT credit on input or capital goods consumed or utilized have been taken; and**

**Benefit of Notification No.12/2003-ST dated 20-06-2003 is availed.**

# **THANK YOU FOR PATENT HEARING**

**PRESENTATION MADE EXCLUSIVELY FOR  
SEMINAR ORGANISED BY DTPA  
ON 23-11-2004**

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