Ref. PDD&CQ / 281 / FEB / 20 16
All India Ophthalmological Society
8A, Karkardooma Institutional Area,
Near Deepak Memorial Hospital,
Karkardooma,
New Delhi - 11 0092
Sirs,
February 22, 2016

With reference to the mail dated 06th Feb, 2016 from Dr. Mr. Barun K. Nayak, mail dated 10th Feb, 2016 from CA Mr. Devendra Thakur and the meeting with both of them on February 05, 2016, please find our comments as follows:

• Issue No. 1: Dr Mehta had pointed out in relation to Membership Fee and Delegate Fee that the member is paying to the association whereas the association and members are not considered as two entities, therefore there is no service provided by one party to another. Hence ST on these should not be applicable.

Clarification

The Principle of Mutuality between an association and its member has been accepted at various Tribunals and Courts during the period prior to 01.07.2012. The decision of the High Court of Jharkhand in the case of Ranchi club [2012] 22 taxmann.com 217 accepting the principles of mutuality is relied upon in major judicial pronouncements. It may be noted that the said decision is challenged by the Revenue before the Supreme Court and the LP is also admitted by the Supreme Court. Further an Explanation has “an unincorporated association or a body of persons, as the case may be and a member thereof shall be treated as distinct persons, The provisions effective from 01.07.2012 have not been tested judicially in any of the appellate fora or the courts. Thus the matter involves interpretation of statutory provisions by higher judicial fora. Hence understanding that litigation is definite, till finality is reached at the Supreme Court, non-collection of service tax would mean contingent liability for any organization including AIOS for the cost involved in litigation. Accordingly in view of the said uncertainty prevailing over the litigious issue, non-collection of service tax, considering the prevalent interest rate of 30% when the delayed payment is beyond one year period and also the fact that collection of tax from the members in case of adverse outcome is almost impossible, in our view the risk factor is quite high. Further it should be noted that most services outsourced viz. security, repairs etc. are taxable under the service tax law, therefore AIOS can take the credit of such service tax charged by the vendor and paid by AIOS.

• Issue No.2: Many medical association are not charging ST on delegate fees and membership fees, therefore AIOS also should refrain from charging it to its members.

Clarification: The service tax authorities have already begun initiating action against various associations/ clubs and societies. Therefore non-payment of service tax will certainly involve long drawn litigation in the matter.
• Issue No.3: We requested for her advice on the ST liability for the period from July 2012 to 31st March 2015.

Clarification: As a practical means it is advised that ideally AIOS should begin to pay with effect from 01.07.2012. Failing to decide on this, at least the decision may be taken for the current financial year. The dispute then would remain for the balance period of about 33 months. Risk should be calculated for this period as non-payment would attract initiation of action by the department.

• Issue No.4: Interest implication on ST demand raised by the dept from 1st July 2012.

Clarification: Upto 01.10.2014, interest is applicable @ 18%.

Post October 2014:

Upto 6 months: 18%
Exceeding 6 months but up to 1 year: 24%
If more than 1 year: 30% p.a.

• Issue No.5: Applicability of exemption of Rs.5000/- per member per month for calculation of ST

Clarification: The aforesaid benefit provided under the Mega Exemption Notification 25/2012-ST applies only to housing societies and residential Complex: The association is not entitled to take the benefit of the same.

• Issue No. 6: What is meant by pure Agent in Service Tax

Clarification: The term ‘pure agent’ is defined under the service tax (determination of value) Rules, 2006 as a person who-

(a) Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
(b) neither intends to hold any title to the goods or services so procured or provided as pure agent of the recipient of service;
(c) does not use such goods or services so procured, and
(d) receives only the actual amount incurred to procure such good

Thus when a service provider incurs some expenditure on behalf of the service receiver under a contractual authorization and the said service is neither used by the service provider nor does he have any title to such service and herecovers the actual amount paid from the service receiver he qualifies as a pure agent of the service receiver.

Issue No. 7: an entity registered under section 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities. Kindly elaborate the Above Point in connection with service tax applicability to AIOS New Delhi.
Clarification: services by an entity registered under section 12AA of the Income Tax Act by way of charitable activities is exempted by the mega exemption notification 25/2012.

In this reference, the term charitable activity is defined at point 2(K) of the said notification as:

"charitable activities" means activities relating to -
(i) public health by way of –
(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics/drugs or alcohol; or
(b) public awareness of preventive health, family planning or prevention of HIV infection;
(ii) advancement of religion or spirituality;
(iii) advancement of educational programmes or skill development relating to, -
(a) abandoned, orphaned or homeless children;
(b) physically or mentally abused and traumatized persons;
(c) prisoners; or
(d) persons over the age of 65 years residing in a rural area;
(iv) preservation of environment including watershed, forests and wildlife;

We understand that AIOS is established to promote study and practice of ophthalmic science and therefore cannot be construed as undertaking any charitable activities to be able to avail the aforesaid exemption.

We trust the above explains & deals with the issue brought for our consideration. Feel free to revert for anything further in the matter;

Thanking You,
Yours faithfully