

Packing is manufacturing or services?

Queries on taxation and service tax liabilities, addressed by Amit Bhagat & Jayanta Kalita of Ernst & Young

Our company manufactures pharmaceuticals in a controlled environment with measured humidity and temperature. We have engaged a contractor for packing the products. The packing is done on our machines and the vendor is merely supplying manpower. The vendor is registered under the category of 'packing activity services'. Recently the vendor received a notice from the authorities demanding service tax. Is the vendor liable to charge service tax for such services?

Packing services attracted service tax under the taxable category of 'packing activity services'. However, any activity that amounts to manufacture was not covered within the ambit of the taxable category.

In the present case, the authorities have issued a notice under the packing activity services category. Therefore, the vendor would be required to substantiate that the activity of packing of pharmaceuticals amounts to manufacture. In a



similar case of Assistant Collector of Central Excise, Guntur vs. Andhra Fertiliser Ltd. the Supreme Court held that the manufacture of fertilisers would be complete only upon loading them into bags, which would make it marketable. The Supreme Court held that without the packing activity the fertilisers would not be marketable.

The definition of 'manufacture' includes activities incidental or ancillary to the manufacture of goods. Therefore, in the present case the vendor would be required to substantiate that the activity of

packing of pharmaceutical products is incidental or ancillary to the manufacturing activity. If the vendor is in a position to substantiate that the packing activity renders the product marketable and amounts to manufacture, he would not be required to charge service tax. However, it is pertinent to note that this position is only applicable to the taxable category of 'packing activity services'.

Not all that crosses border is an export

We are into sale of food products to various airlines. We had

sold food products to an international airline which were used by them for consumption on board an international flight. We had not charged central sales tax (CST) on such sale as we were informed that the same would qualify as a 'sale occasioning export' and would not be liable to tax. However, during our assessment, the authorities have demanded CST on such sale. Please advise whether such sale would attract CST or not.

CST is levied on inter-state sales, i.e. sale which results in movement of goods from one state to another. However, no CST is levied in case of export of goods outside India.

As per the Central Sales Tax Act, 1956, a sale shall be deemed to take place in the course of export if such sale occasions the export of goods outside India.

It has been held in various judicial pronouncements that mere taking out of goods outside India cannot qualify as an export. It is pertinent that the

goods must have a foreign destination where they can be said to be imported.

Further, in the case of Narang Hotels and Resorts vs. state of Maharashtra, it has been held by the Bombay High Court that sale of food articles by flight kitchen on aircraft to an airline does not qualify as exports as there is no specific import destination of the goods and the goods are merely consumed in flight.

We would like to highlight that in the present case, there is sale of food products to an airline, which subsequently sells it to customers on board. Based on the judicial pronouncements, it can be held that the sale should not qualify as exports and should be liable to CST at the applicable rate.

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