TEAM SBS WISHES HAPPY NEW YEAR & PONGAL TO ALL ITS READERS.

Volume-6 Jan -2015 Pages 1-14

SBS Wiki

monthly e-Journal

By

SBS and Company LLP
Chartered Accountants

Welcoming the Delegates for the Interactive Session

Session on Service Tax & Central Excise - CA Sri Harsha

Session on VAT & CST - CA Ram Kumar

Session by Bigsun Group - Lalitha

Session by Bigsun Group - Jagadeesh

Session on Comapnies Act - CS Phanindra & CA Murali Krishna

During the Sessions

During the Sessions

Interaction with Delegate

Concluding Remarks

CONTENTS

COMPANIES ACT

BORROWINGS AND RELATED COMPLIANCES UNDER THE COMPANIES ACT, 2013

Contributed by CS Phanindra D.V.K.

Borrowed Funds form a kay part in the running the business, and the Companies Act, 2013, has robed in more checks and balances, compliances fortransparency and good governance. An effort has been made the list out the provisions as to Borrowings and related compliances thereof.

Section 180 of the Companies Act, 2013 corresponds to section 293 of the Companies Act, 1956, notified to be effective from 12.09.2013, accordingly, compliance of the provisions of Section 180 is to be seen with effect from that date.

The provisions of Section 180 are applicable to all Companies, including OPC/Small Companies, as there is no specific exemption provided.

The earlier section 293 and the new section 180 pertain to restrictions on powers of the Board of Directors i.e., items/acts/limitsfor which permission of the members is to be obtained at a general meeting.

Sl. No.	Aspect of difference	Section 293, CA, 1956	Section 180, CA, 2013
1.	Applicability of the Section	Only to Public Companies and Subsidiaries of a Public Company. Pure Private Companies are not covered.	Applicable to all the Companies. Even Small Companies/OPC, as there is no specific exemption.
2.	Type of member resolution required	Ordinary Resolution	Special Resolution
3.	Structural aspect difference	Sub-section (1) (a) Sell, Lease or otherwise dispose (b) remit, or give time for the repayment of, any debt due by a director (c) invest, otherwise than in trust securities, the amount of compensation received by the company in (a) (d) Borrow monies (excluding temporary loans) in excess of paid-up capital and reserves; (e) Contribution to Charitable and other funds{now included as separate section181}	Sub-Section (1) (a) Sell, Lease or otherwise dispose (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation; (c) Borrow monies (excluding temporary loans) in excess of paid-up capital and reserves; (d) to remit, or give time for the repayment of, any debt due from a director.

The discussion in this article is restricted to provisions of Section 180 (1)(a) & (c), other related provisions thereto, and compliances thereunder so as to be in line with the title of the article.

Pursuant to Section 180 (1): The Board of Directors of a company shall exercise the following powers only with the consent of the company by a Special Resolution:

(a) to sell, lease or otherwise dispose of:

➔ the whole or substantially the whole of the undertaking of the company or;

➔where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

For the purpose of the sub-section, the terms "Undertaking" and "Substantially the whole of the undertaking" has been explained as below:

"Undertaking" shall mean an undertaking in which the investment of the company exceeds 20 % of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20 % of the total income of the company during the previous financial year;

"Substantially the whole of the undertaking" in any financial year shall mean 20 % or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

C) to borrow money:

➔ where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capitaland free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

➔ Every Special Resolution passed by the company in general meeting in relation to the exercise of power by the Board of Directors relating to borrow monies, shall specify the total amount up to which monies may be borrowed by the Board of Directors.

For the purpose of the sub-section, the term "Temporary Loans" has been explained as below:

"Temporary Loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

Borrowing not to be included - Exemption to Banking Company under Section 180 (1)(C):

The acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company.

NON-COMPLIANCE / PENALTIES / RELIEF

From the above, it is clearly evident that prior Special Resolution of the members is to be obtained by the Board of Directors to exercise the powers beyond the limits. Now, we will have a peek in to the consequences for non-compliance.

Penalties for non-compliance:

Similar to Section 293 under the Companies Act, 1956, Section 180 of the Companies Act, 2013, also does not provide for any penalties for non-consequence i.e., obtaining of approval of Members for acting in excess of the limits.

Apart from this, there is also no concept of ratification either under the Old Section or under the new section.

So, it is to be presumed that if the authorities under the Companies Act, identify the contravention, the provisions of Section 450 of the Companies Act, 2013, will be applicable i.e., Punishment where no specific penalty or punishment is provided, as per which

➔ a company or;
➔ any officer of a company or;
➔ any other person;

contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs.10,000/-, and where the contravention is continuing one, with a further fine which may extend to Rs.1,000/- for every day after the first during which the contravention continues.

The only question remains is, who will identify the contravention on the first hand, to penalise under Section 450.

What about the validity of the excess loan amount ?

Under both the Sections i.e., 293 of the CA, 1956 and 180 of CA, 2013, it is categorically stated that :

“No debt incurred by the company in excess of the limit imposed by the respective sub-clauseshall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

Relief to the Banker/Lender:

The above is a relief to the Banker/Lender, and he will definitely take the shelter available in the sections.

CLARIFICATIONS BY MINISTRY ON SECTION 180

After the notification of the said section effective from 12.09.2013, there were some queries raised by the stakeholders, which were clarified by the Ministry through its circulars.

1. Query Sought - EGM notices dispatched before 12.09.2013, for passing of resolutions under Section 293 (1) (a) & (d) – Whether Ordinary Resolution to be passed or Special resolution to be passed ?

Clarification given by Ministry – Vide General Circular No.15/2013, Dated:13.09.2013, the Ministry had clarified queries raised by the stakeholders on various sections notified effective from 12.09.2013, one of the said clarifications pertains to Section 180, wherein it was clarified that if the EGM Notice for passing of resolutions under Section 293 (1) (a) and (d), were dispatched before 12.09.2013, then passing of Ordinary resolution is enough.

2. Query Sought - Validity of Resolutions passed under Section 293(1) (a) & (d) – after the commencement of Section 180 from 12.09.2013. Whether new resolutions to be passed even though there is no variation in limits exercised ?

Clarification given by Ministry –Vide General Circular No.04/2014, Dated:25.03.2014, the Ministry had clarified that the vvalidity of resolutions passed prior to12.09.2013, shall be for one year from the date of notification of Section 180 i.e., one year from 12.09.2013 = 11.09.2014.

It is opined that the above clarification as to the validity of the resolution may not be applicable to Private Companies, as in the first instance, they would not have obtained the approval of the members pursuant to Section 293 (1) (a) & (d), and accordingly, they would have to comply with the provisions of Section 180 with effect from 12.09.2013.

PRACTICAL ASPECTS AS TO BORROWINGS AND COMPLIANCES THEREUNDER

As already discussed at the beginning of the Article, the provisions ofSection 293 of the Companies Act, 1956 were applicable only to Public Company and to Private Company which is a subsidiary of a Public Companyi.e. Pure Private Limited Companies were exempted from the compliance and therefore they could borrow any sums of money without any limit without the need of seeking any approval from the members of the company.

Whereas, the provisions of Section 180 of the Companies Act, 2013, is applicable to all companies i.e. public as well as private. So effective from 12.09.2013, even private companies intending to borrow monies in excess of their paid up share capital and free reserves, have to seek the approval of their members by way of a Special Resolution.

Practical Situation:

One of your client comes to you in connection with availing of Credit facilities from Bank? Assuming that the client is either a Private Company or an unlisted Public Company, the following steps would be required from the Secretarial side, to be in compliance with the provisions of Companies Act, 2013.

➔ Convening of Board meeting and passing of Board resolution for the proposed Borrowings pursuant to Section 179 (3) (d), and filing of Form MGT-14(*) with the Registrar of Companies, within 30 days from the passing of the resolution.

➔ If the proposal to borrow money, where the money to be borrowed, together with the money already borrowed by the company will not exceed the aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business, then directly we can proceed ahead with making loan application.

If not, then approval of the members to be obtained by way of Special resolution for the limits pursuant to Section 180 (1) (c). In case any of the immovable properties of the Company are proposed to be given as security to the Bank/FI for the limits as proposed under Section 180 (1) (c), then approval of the members, under 180 (1)(a), will also need to be obtained.

Accordingly, convening and holding of EGM, passing of the resolutions, and filing of Resolutions in form MGT-14, with Registrar of Companies, within 30 days from the passing of the EGM resolution.

➔ Completion of Loan documentation, filing of Charge Creation/modification forms with the Registrar of Companies, within 30 days from the date of creation/modification as the case may be.

➔ Registration of Charge.

➔ Making entries in the Register of Charges – in CHG-7

GREY AREA:

Section 179 (3) (d) – to borrow monies:

According to the section, in order to borrow monies, approval of the Board is to be obtained at a Board meeting, and a copy of the said resolution is to be filed with the Registrar of Companies, in Form MGT-14, [Section 117].

Query: Whether RENEWAL of a existing CC facility, with out any enhancement in the limits, will amount to a borrowal of monies, and whether the Board resolution given to the Bank for renewal, is required to be filed with ROC.

Answer: There is no Clarity. To be on a safe side, it is better to file the resolution with ROC.

(*) - In the recent Companies Amendment Bill, 2014, passed by the Loksabha on 17.12.2014, awaiting approval of Rajya Sabha, amendments have been proposed that the resolutions filed pursuant to Section 179 (3) will not be available for inspection and even certified copies of the same cannot be obtained.

FILING OF CHARGE DOCUMENTS

Chapter VI [Sections 77-87]– Registration of Charges, deal with the various provisions as to filing of forms for creation of Charges.

Charge creation/modification (Form CHG-1) – to be filed within 30 days from the date of creation/modification, and can be filed with additional fee upto a period of 300 days, by filing an application. However, it seems there is no provision provided for filing application for delay, and the ROC is accepting forms even filed with delay, by mentioning the reasons for the filing delay in the Form CHG-1 itself.

In case of delay beyond 300 days, then a Petition needs to be filed with the Central Government [Powers delegated to the concerned Regional Director, vide Gazette Notification S.O. 1352(E), Dated:21.05.2014.

Satisfaction of Charge (Form CHG-4) – to be filed within 30 days from the date of satisfaction, and can be filed with additional fee upto a period of 300 days, by filing an application. However, it seems there is no provision provided for filing application for delay, and the ROC is accepting forms even filed with delay, by mentioning the reasons for the filing delay in the Form CHG-4 itself.

Creation/Modification of Charge on Debentures (CHG-9)– In respect of secured Debentures, this form is to be filed

Filing of Charge Creation/Modification/Satisfaction forms by the Chargeholder himself:

Unlike under the Companies Act, 1956, wherein only the Company was to file the forms in support of Creation/Modification/Satisfaction of Charges, the Companies Act, 2013, enables the Charge holder/Trustees (in case of debentures), also to file the forms with ROC.

By including this facility, if the Company delays or does not file the forms with ROC either for Creation/Modification/Satisfaction, then the Charge holder himself/themselves can file the forms, without any requirement from the company side, by attaching the already executed documents, thereby protecting their interests.

This article is contributed by Mr Phanindra D.V.K, a practising Company Secretary from Hyderabad. The author can be reached at phanindra@sbsandco.com

INCOME TAX

TDS on Internet, Mobile, Telephone Charges paid to a Resident

Contributed by CA Ramprasad

Introduction:

Tax Deducted at Source (TDS) is one of the modes of recovery of income tax. Chapter XVII of the Income Tax Act, 1961 contains the provisions relating to deduction of tax at source from salaries, payment to contractors, interest etc...

The Finance Act, 2012 has made an amendment to the definition of the term "Royalty" with retrospective effect from 01-06-1976. The amendment was made by inserting Explanation 4, 5 and 6 to the section 9(1) (VI).

This change has an impact on the payments made for internet charges, mobiles bills, telephone charges etc.

Issue after the Amendment:

whether TDS has to be deducted from internet bills, mobile bills etc.. as payment for broadband services, mobile services would amount "Royalty" after the amendment made by the Finance Act, 2012 retrospectively?

Analysis:

The relevant section that merits our consideration is Section 194J. Section 194J is attracted when the payment is made to a Resident.

The Relevant Portion of Provisions:

Section 194J: It provides that any person, not being an individual or Hindu undivided family, who is responsible for paying to a resident any sum by way of

- " Fees for professional services" or
- "Fees for technical services" or
- ..... Or
- "Royalty" or
- .....

shall , at the time of credit of such sum to the credit of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode , whichever is earlier, deduct an amount equal to 10% of such sum as income – tax on income comprised therein;

Explanation: For the purpose of this section-

"Professional Services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or the technical consultancy or interior decoration or advertising or such other profession as is notified by the Board for the purpose of section 44AA or of this section;

The services of Internet facility, mobile phone services are not professional services as per the above definition.

"Fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of section 9(1).

Explanation 2 to Section 9(1)(vii) – For the purpose of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under head "Salaries".)

*I*n CIT v Bharati Cellular Ltd (2008) 175 Taxmann 573 (Delhi) it was held that the word 'technical' is preceded by word 'managerial' and is succeeded by the word 'consultancy'. Since the expression 'technical services' is in doubt and is unclear, the rule of noscitur a sociis is clearly applicable. This would mean that the word 'technical' would take colour from the words 'managerial' and 'consultancy' between which it is sandwiched. On going through the dictionary meaning the words 'managerial' and 'consultancy' involve a human element and both managerial and consultancy services are provided by humans. Consequently, applying the rule of noscitur a sociis, the word 'technical' have to construe as involving a human element. It would not include any service provided by the machines.

The services of Internet facility, mobile phone services are not provided by human beings, this part of the section is also not applicable.

Now, we turn our attention to the term "Royalty"

The explanation to Section 194J provides that Royalty shall have the same meaning as in Explanation 2 to Section 9(1)(vi).

The Explanation 2 to Section 9(1)(vi) reads as under:

For the purpose of this clause, "Royalty" means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—

(*i*) The transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(*ii*) The imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iii*) The use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;

(*iv*) The imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

(*iva*) The use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in Section 44BB;

(*v*) The transfer of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

(*vi*) The rendering of any services in connection with the activities referred to in sub-clauses (*i*) to (*iv*), (*iva*) and(*v*).

This definition of "Royalty" has been amended by inserting Explanation 4,5 and 6 to section 9(1)(vi) by Finance Act, 2012 with retrospective effect from June 1st , 1976.

Explanation 4 clarifies that royalty includes transfer of all or any right for use (or right to use) a computer software (including granting of a licence) irrespective of medium through which such right is transferred.

Explanation 5 clarifies that royalty includes any consideration in respect of any right, property or information, whether or not---

a. The possession or control of such right, property or information is with the payer;

b. Such right, property or information is used directly by the payer;

c. The location of such right, property or information is in India.

Explanation 6 clarifies that the expression " Process" includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fiber, or by any other similar technology, whether or not such process is secret.

For the purpose of section 194J, "Royalty" means royalty as given in explanation 2 to section 9(1)(vi). When explanation 4,5 and 6 inserted in section 9(1)(vi) by the Finance Act 2012, a reference of these explanations was not simultaneously incorporated in section 194J.

The amount payments made for telephone bills, internet bills etc does not constitute payment towards Royalty as per above Explanation 2 to section 9(1)(vi) for following reasons:

(i) There is no transfer of rights or grant of license in respect of any patent, invention, model, design, secret formula, process or trademark or similar property.

(ii) The telecom companies or internet service providers do not impart any information concerning the working of or use of a patent, invention, model, design, secret formula, process or trademark or similar property.

(iii) There is no payment for the use of any patent, invention, model, design, secret formula, process or trademark or similar property.

(iv) The telecom companies or internet service providers do not impart any information concerning technical, industrial, commercial or scientific knowledge, experience or skill.

(v) The payment is not for use or right to use any industrial, commercial or scientific equipment.

(vi) The payment is not for transfer of all or any rights including grant of license in respect of any copyright, literary, artistic or scientific work.

(vii) The payment is not for rendering of any services in connection with the activities referred to above.

It is relevant to note that 'right' is referred to in Explanation 2(i), (iva) and (v). In the instant case, there is no question of applicability of (i) and (v). Clause (iva) deals with industrial, commercial or scientific equipment. A telephone apparatus is a mobile instrument or other items at best can be instruments or appliances and not industrial/commercial/ scientific equipment

The Supreme Court in the case of BSNL Vs. UOI (2006) 145 STC 91, at Para 78 has held that providing access or telephone connection does not put the subscriber in possession of the electromagnetic waves any more than a toll collector puts a road or bridge into the possession of the toll payer by lifting the toll gate. Of course, the toll payer will use the road or bridge in one sense. But the distinction with the sale of goods is that the user would be of the thing or goods delivered. The delivery may not be simultaneous with the transfer of right to use. But the goods must be in existence and deliverable when the right is sought to be transferred.

The Supreme Court also held that the nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.

It is a settled position of law that a particular provision refers to a term and the said term is referred to in another provision, only that other provision can be read. Nothing further can be read into the definition. In the instant case, Section 194J provides that Royalty shall have the same meaning as in Explanation 2 to Section 9(1)(vi). Therefore, nothing else can be read and since the applicability of Explanation 2 to Section 9(1)(vi) has been ruled out in respect of payments towards telephone bills, mobile phone bills and internet bills, Section 194J has no application.

Conclusion:

In our view, payments towards telephone bills, mobile bills and internet services, such payments cannot be considered as payment by way of Royalty and hence Section 194J in the context of Royalty has no application.

As such the provisions of section194J are not applicable to the payment made towards Internet, Mobile Phone Service etc.

This article is contributed by Ramprasad, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at caram@sbsandco.com

SERVICE TAX

Input Service vs Works Contract Service – A Case Study

Contributed by CA Sri Harsha

The definition of 'input service' is always a mystery to the trade and business and the concept of 'works contract' is even more disturbing. This article attempts to deal with the two promising issues when they get in touch with each other, that is to say whether the credit of service tax paid towards the 'works contract' services shall be eligible for Cenvat Credit as input service.

Before examining the issue, it is very important for the reader to note the changes that have taken place in the definition of 'input service' as laid down vide Rule 2(l) of Cenvat Credit Rules, 2004. Earlier to 2011, the definition of 'input service' is very wide enough to cover all the services in its ambit to claim as Cenvat Credit for the service provider. This definition has led to a huge revenue loss to theexchequer and hence there was an amendment to the definition of 'input service' post 2011 which has restricted the scope of such definition, which shall be discussed in detail in the later part of the article.

The amended definition which was effective from 01.04.2011 has made the definition of 'input service' into 3 parts.

1st Part – 100% nexus with the provision of the output services provided by service provider;

2nd Part – Irrespective of the Nexus theory, the credit stand eligible;

3rd Part – Specifically Excluded from the ambit of the definition.

As laid above, the first part of the definition deals with eligibility of the credit of services, which are having nexus with the provision of output services. Hence, all services which are having intimate nexus shall be eligible vide this part of the definition except specifically excluded (vide third part of the definition). The second limb of the definition of the said input service deals with eligibility of the credit of services irrespective whether they having nexus with the provision of output services. To be more lucid, once the services procured falls in the second limb, they are eligible for availment of credit irrespective of having nexus with the output services.

The third limb of the definition of the said input service deals with exclusion category. If the services procured fit into the third limb of the definition, the credit on such services cannot be availed unless the service provider fits into the eligibility criterion laid down by such limb. To be precise, the credit of the services shall be allowed only if the service procured and service provided falls in the same category. One of the services that appear in the 3rd limb is 'works contract services' which this article aims to deal with it.

Let us put down the exact lines spelt out by the definition when it comes to exclusion of the credit on works contract services, so that we have a clear picture of the same. The relevant part is extracted as under:

(l) "input service" means any service –

but excludes

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b)laying of foundation or making ofstructures for support of capital goods, except for the provision of one or more of the specified services

From the above part of the definition, it is evident that the credit of service tax paid on input services pertaining to the works contract services and construction services are excluded and shall be allowed only if they are used for providing the specified services. That is to say the service provider engaged in construction or execution of works contract of a building or a civil structure or part thereof or laying of foundation or making of structures for the support of capital goods can only avail credit of service tax paid on any such services received from either sub-contractors or any other person.

Now with the above background of the law, the question for consideration is whether the said exclusion shall be applicable only for 'original works' in the works contract services or 'all works contract services'?

Let us take an example of a service provider who is engaged in provision of chartered accountant services. The chartered accountant wishes to renovate/repair his office for provision of effective services and thus hires a contractor for renovating/carrying the repairs works of his office. The contract was awarded with material and labour to the account of the contractor and thus making the contract as 'works contract' services as per Section 65B (54) of the Finance Act, 1994. The contractor has provided renovation/repair services and charged service tax in his invoice. The chartered accountant has paid the same to the contractor and was in doubt whether the said service tax paid is eligible for the availment of cenvat credit and utilisation thereof against the liability towards chartered accountant services?

On the detailed examination of the definition of the 'input service', the second limb allows the credit of service tax pertaining to the renovation of the premises of the service provider. The relevant part of the second limb states as 'and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises'. As stated above, once the service falls under the second limb, there is no question of looking for nexus and stands eligible. However, the third limb specifically excludes the credit of the 'works contract' services except the service provider is a 'works contracts' service provider, which is not the fact in the instant case. Hence, there is a contradiction between the 2nd limb and 3rd limb. When 2nd limb specifically includes repair/renovation services, the 3rd limb allows such credit to only works contract service providers.

It can be argued that the 2nd limb only covers such services where material is not involved that is to say if the contract is purely for labour, then the credit of such services is eligible vide 2nd limb and if the contract is for both material and labour, then it does not fit into 2nd limb and gets excluded by virtue of 3rd limb since the later uses the phrase 'works contract' which means material and labour in the same contract. In my view, the above argument is not logical since the credit of services procured shall be decided to be eligible or not depending upon the definition of the 'input service' and not based on the method of agreement/contract entered in the context.

Hence, I am of the view that when the 2nd limb specifically allows the credit of service tax paid on services pertaining to the modernisation, renovation or repairs of a premises of provider of output service provider or an office relating to such premises, there cannot be an exclusion carved out in 3rd limb. If the intention of the legislature is to exclude such services then there shall not be in any mention of the same in the 2nd limb. Hence, the credit of such services stands eligible for the chartered accountant.

Then that leads us to a question, what are the services that are covered under 3rd limb of the definition to stand out of the definition of the 'input services'. In my view, the 3rd limb covers services in the nature of 'original works' namely the new constructions or substantial constructions and not the petty works. Let us assume that Chartered Accountant instead of renovation/repairs to his office intends to construct a new office, in such a case whether the credit of service tax paid to the contractor is eligible? The answer is no, since the 3rd limb covers such instances and also the above reasoning is in alignment with the intention of the legislature because of the removal of phrase 'setting up' from the 2nd limb of the definition of 'input service' with effective from 01.04.2011.

To conclude, the 3rd limb covers contracts which are in the nature of the original works and not the petty works or other than original works which stands includible in the 2nd limb. It is very important to note that all credits of work contract services are not sprightly ineligible or eligible. It has to be carefully examined in the light of definition of 'input service' before availment and pre-utilisation.

This article is contributed by Sri Harsha, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at harsha@sbsandco.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Companies Amendment Bill, 2014 - Amendments Asked For vs Amendments Given	09-Jan-2015	CS Phanindra DVK	SBS - Hyd
2	Comprehensive Study on Works Contract Service - Service Tax	21-Jan-2015	CA Sri Harsha	SBS - Hyd
3	Practical Aspects on Scrutiny - Income Tax	30-Jan-2015	CA Suresh Babu S	SBS - Hyd
4	Overview of Agriculture Land Ceiling	06-Feb-2015	Syslex Law Firm	SBS - Hyd

Session on Assesment Procedures

Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana
Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh
Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh

Disclaimer:

The articles contained in SBS Wiki, are contributed by the respective resource persons and any opinion mentioned therein is his/their personal opinion. SBS Wiki is intended to be circulated among fellow professional and clients of the Firm, to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). The information provided is not for solicitation of any kind of work and the Firm does not intend to advertise its services or solicit work through SBS Wiki. The information is not intended to be relied upon as the sole basis for any decision. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

SBS AND COMPANY LLP [Firm] does not endorse any of the content/opinion contained in any of the articles in SBS Wiki, and shall not be responsible for any loss whatsoever sustained by any person who relies on the same.

To unsubscribe, kindly drop us a mail at kr@sbsandco.com with subject 'unsubscribe'.