

Are service tax provisions applicable for building power plants in J&K?

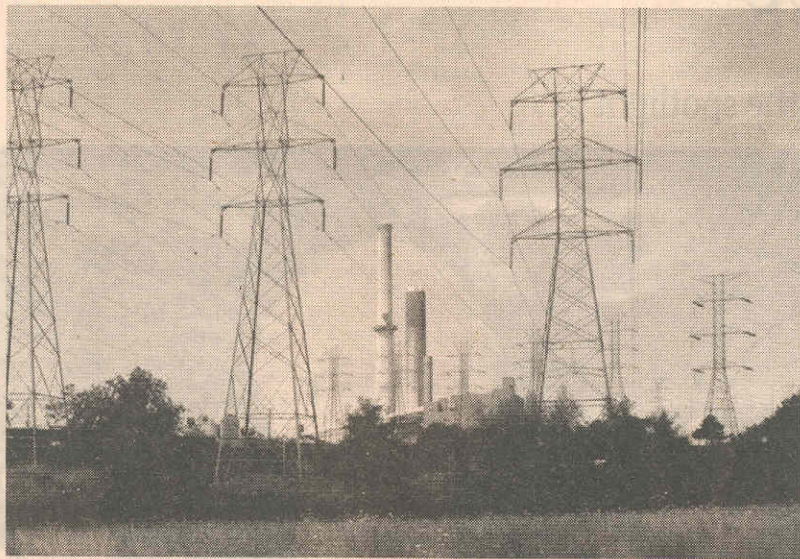
Here are some SME queries on taxation and foreign trade regulation, addressed by Ernst & Young. Readers may mail queries at fesmes@gmail.com

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We are setting up a power plant in Jammu & Kashmir and for this purpose we have entered into an agreement with a construction company for setting up the facility. The construction company has charged service tax @ 12.36% in its invoice for the initial advance payment. Kindly advice if service tax can be charged on such advance.

The service tax provisions apply to the whole of India except Jammu & Kashmir. The services provided within the territorial limits of Jammu & Kashmir are excluded from the purview of levy of service tax, irrespective of whether the service provider or service recipient is residing within or outside the state. The construction of the power plant will be performed by the service provider within the boundary of Jammu & Kashmir and hence, such service might not attract service tax. In view of the same, you need to intimate the correct position to the service providers so that no service tax is charged by them for the services provided in Jammu & Kashmir. However, there may be local service tax/VAT that could apply to construction activity.

We are a company engaged in IT and ITes activities and have entered into a contract with a Singapore-based company for annual maintenance of our office equipment like printers, fax machines, air-conditioners, etc. We understand we are liable to pay service tax as recipient of service for the services received from outside India. However, we are not sure if we are required to take registration, as the gross amount of services availed by us from the overseas company at present is Rs 3 lakhs.



The service tax provisions have laid down that any provider of taxable service whose aggregate value of taxable service in a financial year exceeds Rs 7 lakh is required to obtain registration from the jurisdictional authorities. However, the exemption is available only for persons providing taxable service. The liability to pay service tax arises on you as a recipient of service from abroad or a deemed service provider and such exemption benefit is not available to such persons. Hence, you might be required to obtain registration under the category of 'management, maintenance or repair service' for the maintenance service received from abroad.

We are a newly set up manufacturing company engaged in production of iron and steel billets at our factory. We have procured capital goods, including pollution control equipment, and are availing credit of the

duty paid on the capital goods. Please advice if we are eligible for credit of the duty paid on the pollution control equipment as well.

The definition of capital goods under the 'Cenvat Credit Rules 2004' includes pollution control equipment. The credit for the same would be eligible provided the same is installed and used in the factory of the manufacturer. Therefore, along with other capital goods used in the production process, you should be eligible for availing Cenvat credit in respect of the pollution control equipment if the same is used in your factory.

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