Exemption from levy of Krishi Kalyan Cess provided to the invoices issued and services completed prior to 1 June 2016

Background

With the introduction of Krishi Kalyan Cess (KKC) from 1 June 2016 in terms of the Chapter VI of the Finance Act, 2016 (No. 28 of 2016), the Ministry of Finance has issued several notifications to give effect to the levy and collection of KKC.

The Central Government by an amendment to Rule 5 of the Point of Taxation Rules, 2011 had inserted an Explanation to provide that KKC being a new levy, Rule 5 will be applicable.

Accordingly, KKC would not have applied (a) if the payment is received and an invoice is issued before 1 June 2016; and (b) if payment is received before 1 June 2016 and invoice is issued within 14 days i.e. up to 14 June 2016.

The literal interpretation of amended Rule 5 indicated that a service provider will be liable to pay KKC on outstanding receivables as on 31 May 2016.

However, based on settled judicial precedents, Industry was of the view that in respect of invoices outstanding as on 31 May 2016, since the provision of services is completed prior to the effective date of levy i.e. 1 June 2016, no KKC should be leviable.

In this respect, several representations were made before the Central Board of Excise and Customs (CBEC) to provide clarification on applicability of KKC on invoices outstanding as on 31 May 2016.

Coverage

The Ministry of Finance has now issued a Notification No. 35/2016-Service Tax dated 23 June 2016 whereby the exemption from levy of KKC has been granted to invoices issued on or before 31 May 2016 subject to the condition that the provision of services has been completed by 31 May 2016.

Our comments

As per the interpretation of the said notification, all outstanding debtors, where services are completed on or before 31 May 2016 for which invoices are also issued on or before 31 May 2016 (irrespective of when the payment is received) will not attract KKC. However, cases where the service is completed before 31 May 2016 but invoice is issued after 31 May 2016 will attract KKC.

It seems the benefit of the notification is also available to services which are taxable on reverse charge mechanism (including import of services) if the aforesaid two conditions are satisfied since notification is not restricted to any specific transactions.

The Ministry of Finance has positively considered the various representation made by the industry bodies and has put to rest the ambiguity surrounding the applicability of KKC.