CHAPTER 3

PAYMENT OF SERVICE TAX AND FILING OF RETURNS

UNIT 1: PAYMENT OF SERVICE TAX

Question 1

Briefly answer the following questions:-

(a) Should service tax be paid even if not collected from the client or service receiver?

(b) Where a service provider maintains books of accounts on mercantile basis relating to taxable services provided by him, will service tax be payable on accrual basis?

(c) Is a service provider allowed to pay service tax on a provisional basis?

(d) A particular service has been brought into the service tax net with effect from 1.7.2010. Mr. Vignesh has provided this service on 20.6.2010; the payment for the same was received on 10.7.2010. Is service tax payable on the same?

(e) Mr. Saravanan has collected a sum of Rs. 15,000 as service tax from a client mistakenly, even though no service tax is chargeable for such service. Should the amount so collected be remitted to the credit of the Central Government?

(f) Who is liable to pay e-payment of service tax?

(g) Whether life insurer carrying on life insurance business has option to calculate service tax at different rate?

(h) Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case?

(i) How can the excess payment of service tax be adjusted?

(j) Can an assessee file a revised service tax return?

Answer

(a) Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per rule 2(1)(d) of the

Service Tax Rules, 1994. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

(b) Service tax is not payable on accrual basis and the method of accounting is irrelevant for making payment of service tax. Service tax is payable to the Government only when any payment is received-whether in advance or after the bill is raised-from the client or service receiver for the taxable services provided.

(c) In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The concerned officer may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.

(d) No service tax is payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable. The time of receipt of payment towards the value of services will not be relevant for this purpose. For the service tax to be leviable, on the date on which the service was rendered, it should be exigible to the levy.

In the given case, Mr. Vignesh has provided the service on 20.06.2010 and has received the payment on 10.07.2010. Assuming that, the invoice was raised by Mr. Vignesh before 01.07.2010, he will not be liable to collect service tax.

(e) Section 73A of the Finance Act, 1994 casts an obligation on every person who has collected service tax from any recipient of service in any manner as representing service tax, to remit the same to the credit of the Central Government. On account of this provision, where any person has collected any amount, which is not required to be collected from any other person, in any manner as representing service tax, he should also immediately pay the amount so collected to the credit of the Central Government.

Hence, Mr. Saravanan has to remit the service tax collected by him on the non taxable services to the credit of the Central Government before the due date.

(f) *T*he assessee who has paid service tax of Rs.10,00,000/- or above in the preceding financial year has to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking in the current financial year.

(g) An insurer carrying on life insurance business who is liable for paying service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by him towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option is not available in cases where:

(i) the entire premium paid by the policy holder is only towards risk cover in life insurance; or

(ii) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

(h) Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per rule 2(1)(d) of the Service Tax Rules, 1994. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. In this case, the amount received from the service receiver will be taken to be inclusive of service tax. Accordingly, service tax payable by the service provider shall be ascertained by making back calculations in the following manner:-

$$\text{Service tax payable} = \frac{\text{Amount received} \times \text{Service tax rate}}{(100 + \text{Service tax rate})}$$

(i) Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, such an adjustment would be subject to the following conditions mentioned below:

(i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid and proposed to be adjusted should not exceed Rs.1,00,000 for the relevant month or quarter except in case of assessees opting for centralized registration.

(iii) Adjustment can be made only in the succeeding month or quarter.

(iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

(j) An assessee can submit a revised return, in Form ST-3 in triplicate, to correct a mistake or omission in the original return, within a period of 90 days from the date of submission of the original return.

Question 2

Answer the following questions:

(a) An assessee who has collected service tax from a client is unable to perform the service. Briefly explain the situations in which and the conditions subject to which he can adjust the service tax relating to above, against his forthcoming service tax liability.

(b) Who is liable to pay service tax in relation to services provided by a goods transport agency?

(c) Mr. Vasudevan has rendered freely, a service to a client which is taxable, but has not charged or received any fee from the client. Is service tax payable on such free service?

(d) What are the due dates for payment of service tax?

(e) What is the late fee payable for delay in furnishing the service tax return? Can the same be waived?

Answer

(a) An assessee may adjust excess payment of service tax against his liability of service tax for subsequent periods. Where an assessee has deposited service tax in respect of a taxable service which is not so provided by him either wholly or partially for any reason, he may adjust the excess service tax so paid by him (calculated on a *pro rata* basis) against his service tax liability for the subsequent period.

However, for carrying out such adjustment, the assessee must have refunded the value of taxable service and the service tax thereon to the person from whom it was received.

In such cases of adjustment, the assessee is required to file the details in respect of such *suo moto* adjustments done by him at the time of filing the service tax returns. The return Form ST – 3 also provides for enclosure of documentary evidence for adjustment of such excess service tax paid.

(b) In relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is-

(a) any factory registered under or governed by the Factories Act, 1948,

(b) any company formed or registered under the Companies Act, 1956,

(c) any corporation established by or under any law,

(d) any society registered under Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India,

(e) any co-operative society established by or under any law,

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder, or

(g) any body corporate established, or a partnership firm registered, by or under any law.

The person liable for paying service tax is any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage.

(c) Section 67(1)(iii) of the Finance Act, 1994 ensures payment of service tax based on valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 cannot apply.

Thus, no service tax is payable when value of services is zero, as the charging section 66 provides that service tax is chargeable on the value of taxable service.

Hence if the value is zero, the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

(d) Rule 6(1) of the Service Tax Rules, 1994 provides that service tax on the value of taxable services received shall be paid to the credit of the Central Government in the following manner:-

Assessee	Duration of payment	Due date of payment
Individual, Proprietary concern or a partnership firm	Quarterly	(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and (ii) by the 5th day of the month, in any other case, immediately following the quarter in which the payments are received, towards the value of taxable services.*
Any other	Monthly	(i) by the 6th day of the month, if the duty is deposited

Assessee	electronically through internet banking; and (ii) by the 5th day of the month, in any other case, immediately following the calendar month in which the payments are received, towards the value of taxable services.*

*Also, the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

(e) The late fee payable for delay in submitting the service tax return is furnished below:

S.No.	**Period of delay (No. of days from the due date of filing the return)**	**Late fee (Rs.)**
(a)	15 days	500
(b)	16 – 30 days	1000
(c)	Beyond 30 days	Rs.1000 plus Rs.100 for every day of delay beyond 30 days.

However, the total late fee payable shall not exceed Rs.2,000.

Waiver of late fee: Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there was sufficient cause for the delay, reduce or waive the late fee.

Question 3

Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events:

Particulars	***Rs.***
Contract for services entered into on 31.8.2010	
Advance received in September, 2010 towards all services	*60,000*
Total value of services, billed in February, 2011	*2,10,000*
Above includes non-taxable services of	*70,000*
Balance amount is received in March, 2011	

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

Answer

The liability to pay service tax arises at the time of receipt of advance in September, 2010 and at the time of receipt of balance consideration in March 2011. Service tax is payable as soon as any advance is received as the taxable service includes "service to be provided" and payments received, before during or after the provision of taxable services form part of the gross amount charged for the taxable services. Further, the liability to pay service tax arises only upon the receipt of the value of taxable services and not when the bill is raised.

Advance portion

Particulars	**Rs.**
Advance received towards all services in September, 2010	= 60,000
Amount billed for taxable services	= 2,10,000 – 70,000
	= 1,40,000
Advance received towards taxable services	$= \left[60{,}000 \times \frac{1{,}40{,}000}{2{,}10{,}000}\right]$
	= 40,000
Service tax @ 10% (since, service tax is charged separately)	= 40,000 x 10%
	= 4,000
Education cess @ 2%	= 80
Secondary and higher education cess @ 1%	= 40
Total service tax liability	= 4,120

In this case, the due date for payment of service tax will be 5th October, 2010.

Balance portion

Particulars	**Rs.**
Balance amount received in March 2011	= 2,10,000 – 60,000
	= 1,50,000
Amount received towards taxable services	$= \left[1{,}50{,}000 \times \frac{1{,}40{,}000}{2{,}10{,}000}\right]$

	= 1,00,000
Service tax @ 10%	= 1,00,000 x 10%
	= 10,000
Education cess @ 2%	= 200
Secondary and higher education cess @ 1%	= 100
Total service tax liability	= 10,300

In this case, the due date for payment of service tax will be 31st March, 2011.

Question 4

Mr. Y, a consulting engineer raised a bill of Rs. 2,24,720 (including service tax) on his client for consulting services rendered by him in June, 2010. A partial payment of Rs. 1,68,540 was received by Mr. Y in March, 2011. Compute the service tax amount payable by Mr. Y and the due date by which service tax can be deposited.

Answer

The service tax is payable to the Government only when payment is received, though the service provider charges service tax in his bill as and when the service is provided.

In the given case, amount of service tax liable to be paid by Mr. Y

$$= \frac{\text{Gross Amount} \times \text{Rate of tax}}{(100 + \text{Rate of tax})}$$

$$= \frac{1{,}68{,}540 \times 10.30}{110.30} = 15{,}739$$

Mr. Y is required to deposit service tax of Rs.15,739 on or before 31.03.2010.

Note:

1. Service tax is payable only on the value of taxable services actually received [Rule 6 of the Service Tax Rules, 1994].
2. Rate of service tax is taken to be inclusive of 2% education cess and 1% secondary and higher education cess.

Question 5

Does a service provider have an option to pay service tax at a rate different from the general rate applicable on gross value of taxable services, in the case of purchase or sale of foreign currency?

Answer

Yes, there is an option to pay an amount calculated at 0.25% of the gross amount of currency exchanged, instead of paying service tax at 10% on the value of taxable services.

The option is available to a person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing provided by a foreign exchange broker, including an authorized dealer in foreign exchange.

However such option is not available in a case where the consideration for the service provided or to be provided is shown separately in the invoice, bill/challan issued by the service provider.

Question 6

What is the due date for payment in case of e-payment of service tax?

Answer

As per rule 6(1) of the Service Tax Rules, 1994, where service-tax is paid electronically through internet banking, the service tax on value of taxable service received:

(i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the 6th day of the month immediately following the said quarter, and

(ii) in other cases (company & HUF) during any calendar month is payable by the 6th day of the month immediately following the said calendar month.

The due date for the month of March is 31st March.

UNIT 2: FILLING OF RETURNS

Question 1

Answer the following questions:-

(a) Is e-filing of service tax return permitted?

(b) Which are the documents to be submitted along with service tax return?

(c) What are the due dates for filing of service tax returns?

(d) Who are the persons liable to file service tax returns?

(e) Whether service tax return can be furnished after the due date?

(f) Mr. Raju is a multiple service provider and files only a single return. State with reasons whether he can do so?

Answer

(a) Yes, e-filing of service tax returns is permitted under service tax law. With effect from 01.04.2010, e-filing of returns has been made mandatory for the assessee who has paid total service tax of Rs. 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

(b) Along with service tax (ST-3) return, the following documents should be attached:

(i) copies of GAR-7 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return.

(ii) memorandum in Form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. This memorandum (Form ST-3A) is to be attached only when the assessee opts for provisional payment of service tax.

(c) The service tax return (in Form ST-3) should be filed on half yearly basis by the 25th of the month following the particular half-year. The due dates on this basis are as under:

Half year	Due date
1st April to 30th September	25th October
1st October to 31st March	25th April

In case the due date of the filing of return i.e. either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.

(d) Section 70 of the Finance Act, 1994, i*nter alia,* provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a return to the Superintendent of Central Excise.

Sub-section (2) of section 70 stipulates that certain notified person or class of persons shall also furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

(e) A delayed return can be furnished by paying the prescribed late fee. Section 70(1) of the Finance Act, 1994 as amended, *inter alia,* provides for filing of periodical return after the due date with the prescribed late fee of not more than Rs. 2,000/-.

(f) Yes, Mr. Raju can file a single return though he is a multiple service provider. He has to furnish the details in each of the columns of the Form No.ST-3 separately for each of the taxable services rendered by him. Thus, instead of showing a lump sum figure for all the services together, service-wise details should be provided in the return.

Question 2

Answer the following:

(a) Can service tax return be revised by a person?

(b) Ms. Amrapali, a registered service provider did not render any services during the financial year 2010-11. Whether she is required to file service tax return?

Answer

(a) An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 90 days from the date of submission of the original return.

(b) Every assessee shall file a half yearly return in Form ST-3. Even if there is no service provided during a half year, a Nil return has to be filed. Therefore, Ms. Amrapali is required to file a service tax return.

Question 3

List the documents to be submitted alongwith the first service tax return.

Answer

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing the return for the first time or 31st January, 2008 whichever is later, a list of following documents in duplicate:

(a) all the records prepared or maintained by the assessee for accounting of transactions in regard to

   (i) providing of any service, whether taxable or exempted;

   (ii) receipt or procurement of input services and payment for them;

   (iii) receipt, purchase, manufacture, storage, sale or delivery, as the case may be, in regard to inputs and capital goods;

   (iv) other activities such as manufacture and sale of goods, if any.

(b) all other financial records maintained by him in the normal course of business.