POST-BUDGET MEMORANDUM 2009

Indirect Taxes

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI

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NEW DELHI

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Executive Summary

1. Rate of tax on Work Contracts Service under Composition Scheme

It is suggested that this anomaly in the rate of tax under the two services may be removed by reducing rate of tax on works contract service (under composition scheme) to 3.33%.

2. To provide exemption where service receiver liable to tax under reverse charge method

It is suggested that exemption from payment of service tax should be granted under reverse charge method also otherwise a service receiver has to comply with all formalities of obtaining registration, payment of service tax and filing of return even if it has availed service once only. However, if it is felt that service availers may not be granted exemption to the extent of Rs.10 lakhs, the exemption limit may be fixed at lesser amount for them.

3. To remove discrimination in levying service tax on chartered accountants, cost accountants, company secretaries vis-à-vis legal consultancy services.

It is suggested that the services of practicing chartered accountants, cost accountants and company secretaries may also be taxed in the

similar way as it is proposed for legal consultancy services. Service to an individual or by an individual should not be taxed.

4. Cenvat credit on motor vehicles

It is suggested that cenvat credit of excise duty paid on purchase of motor vehicles should be allowed to all service providers who are using the same in providing taxable output service.

5. Denial of Cenvat credit on capital goods and input service under notification No.1/2006

It is therefore suggested that restriction of availing cenvat credit of excise duty paid on capital goods and service tax on input service should be withdrawn under notification no.1/2006.

6. Clarification on the term "firm" under the definition of "business entity"

It may be clarified that the word "business entity" does not include sole proprietorship firms/concerns.

7. Amendment in Challan Form GAR 7

It is suggested that the aforesaid deficiency in the challan format may be removed.

8. Refund scheme for exporters

It is suggested that facility of extended period of limitation of one year, may be extended to earlier refund applications filed after the expiry of six months.

It is further suggested that the said service be included in the specified services under notification No.18/2009 on which exporters are being allowed refund, when the services are used in connection with export of goods.

9. Cenvat Credit Return

It is therefore, suggested that the requirement of filing of separate return under rule 9(9) of Cenvat Credit Rules, 2004 be dispensed with.

10. Impact of change in scope of Business Auxiliary Services with reference to job work

Therefore, it is necessary to clarify that if all the conditions of excisable goods are satisfied except marketability, the job working activity would remain excluded from service tax purview.

11. Misuse of power to arrest under Central Excise

It is suggested that immediate action may be taken to avoid misuse of powers to arrest. It is also suggested that in this era of liberalization, this power to arrest may be withdrawn. The provisions relating to

prosecution under sections 9, 9A and 9AA would be sufficient like in other Acts.

12. Misuse of power under section 14 of the Central Excise Act, 1944

It is suggested that power given under section 14 should be exercised only when the information is not provided by the person concerned and there may be some check on use of such power. It should not be used in a routine manner resulting in harassment to the trade and industry. It is suggested that following necessary actions may be taken-

(i) Notices should not be issued to Directors/Managing Directors/Chairman in any routine manner.

(ii) Wherever it is possible to obtain the information through simple letters, no summons should be issued.

(iii) Recording of statement may start at the given time and in the normal course it should not be continued after office hours.

(iv) A copy of the statement recorded should be given to the person concerned immediately after recording of the statement.

(v) No summons may be issued in case there is a question of law.

POST BUDGET MEMORANDUM - 2009

INDIRECT TAXES

1. Rate of tax on Work Contracts Service under Composition Scheme

Service Tax on Works Contract service was levied with effect from 1.6.2007. An optional Composition Scheme for Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 was notified. Initially the notified rate was 2% under the Composition Scheme. This was increased to 4% w.e.f. 1.3.2008. This 4% was equal to the net rate (after abatement under notification No.1/2006) for commercial or industrial construction services as well as construction of complex services. The said notification grants abatement equal to 67% of the gross amount charged. Therefore, the 12% of remaining 33% used to work out nearly 4%. Therefore, the net rate of tax under the two services was similar.

Now w.e.f. 24.2.2009, the general rate of service tax has been reduced to 10%. Therefore the net rate of tax on commercial or industrial construction services and construction of complex service works out to 3.33%. On the other hand the rate of tax on works contract service (under composition scheme) continues to be 4%.

It is suggested that this anomaly in the rate of tax under the two services may be removed by reducing rate of tax on works contract service (under composition scheme) to 3.33%.

2. To provide exemption where service receiver liable to tax under reverse charge method

Notification No.6/2005 dated 1.3.2005 (as amended) provided exemption to small service providers whose value of taxable services received during the

preceding financial year does not exceed Rs.10 lakhs, subject to certain conditions prescribed therein. The said notification is not applicable where service receiver is liable to pay service tax under reverse charge method.

It is suggested that exemption from payment of service tax should be granted under reverse charge method also otherwise a service receiver has to comply with all formalities of obtaining registration, payment of service tax and filing of return even if it has availed service once only. However, if it is felt that service availers may not be granted exemption to the extent of Rs.10 lakhs, the exemption limit may be fixed at lesser amount for them.

3. To remove discrimination in levying service tax on chartered accountants, cost accountants, company secretaries vis-à-vis legal consultancy services.

Section 65(105)(s) of the Finance Act, 1994 levies service tax on the services provided to any person, by a practicing chartered accountants in his professional capacity in any manner. Similar provisions are there for levy of service tax on practicing cost accountants and company secretaries. Notification No.25/2006 dated 13.7.2006 grants exemption to practicing chartered accountants, practicing cost accountants and practicing company secretaries from payment of service tax on the services relating to representing the client before any statutory authority in the course of proceeding initiated under any law for the time being enforce by way of issue of notice.

Finance Bill, 2009 proposes to levy service tax on legal consultancy services only when it is provided to business entity by any other business entity in relation to advice, consultancy or assistance in any branch of law

in any manner. It further provides that any services provided by way of appearance before any Court, Tribunal or any authority shall not amount to taxable services. The explanation clarifies that business entity does not include the individual. It would be noted that in case of practicing chartered accountants, practicing cost accountants and practicing company secretaries, service tax is being charged even when the service is being provided by individual or to an individual and exemption under notification 25/2006 is there only when notice has been issued. Therefore, there is discrimination in the methodology of levy of service tax on the services of chartered accountants, cost accountants and company secretaries vis-à-vis legal consultancy services.

It is suggested that the services of practicing chartered accountants, cost accountants and company secretaries may also be taxed in the similar way as it is proposed for legal consultancy services. Service to an individual or by an individual should not be taxed.

4. Cenvat credit on motor vehicles

Rule 2(a) of Cenvat Credit Rules, 2004 defines capital goods. Clause B provides that motor vehicles is a capital goods only for specified class of service providers. In this era of liberalization when the concept is to grant credit of duty/tax paid on all inputs, capital goods and input service used in manufacturing of dutiable goods or providing of taxable services, there appears to be no justification for allowing cenvat credit on motor vehicles as capital goods to certain categories of service providers only. It is well known that motor vehicles are used by all service providers in their usual course of business.

It is suggested that cenvat credit of excise duty paid on purchase of motor vehicles should be allowed to all service providers who are using the same in providing taxable output service.

5. Denial of Cenvat credit on capital goods and input service under notification No.1/2006

Notification No.1/2006 grants abatement of specified amount to certain services (e.g. commercial or industrial construction service, construction of complex service etc.) subject to the condition that service provider shall not avail credit of excise duty/ service tax on inputs or capital goods or input service, used for providing such taxable service. It would be noted that in case of works contract service, the concessional rate of 4% (earlier 2%) is being charged by way of composition scheme. The said composition scheme restricts availment of credit on inputs only. There is no restriction on availing credit of excise duty/service tax paid on capital goods/ input service in the said scheme. The idea behind the abatement notification as well as composition scheme is to ensure that no service tax is charged on the value of goods used for providing taxable service. Therefore, cenvat credit on input should not be allowed. There appears to be no justification for restricting credit of excise duty paid on capital goods and service tax paid on input service, particularly when there is no similar restriction under works contract service.

It is therefore suggested that restriction of availing cenvat credit of excise duty paid on capital goods and service tax on input service should be withdrawn under notification no.1/2006.

6. Clarification on the term "firm" under the definition of "business entity"

Finance Bill, 2009 levies service tax on the services rendered by a business entity to business entity in relation to advice, consultancy or assistance in any branch of law. The Explanation clarifies that for the purpose of this sub-clause, business entity includes an association of persons, body of individuals, company or firm. It does not include an individual.

It may be clarified that the word "business entity" does not include sole proprietorship firms/concerns.

7. Amendment in Challan Form GAR 7

The current challan format GAR-7 does not have certain features which the erstwhile format TR-6 had for e.g.

Cetegory of service for which tax is paid; the present format only has accounting codes from which no one can decipher the category.

The counterfoil does not have name of the assessee, but only service tax code (Regn. No.). No one can find name of assessee from challan.

No place to mention period for which tax is paid in GAR-7

It is suggested that the aforesaid deficiency in the challan format may be removed.

8. Refund scheme for exporters

(i) The time period for filing refund claim is being increased to one year from the date of export. The condition for filing refund claims once in a quarter is also being dispensed with. Now the exporters can file a return claim any time after export.

It is suggested that facility of extended period of limitation of one year, may be extended to earlier refund applications filed after the expiry of six months.

(ii) Finance Bill, 2009 proposes to levy service tax on transport of coastal goods and goods through inland water including national waterways.

It is suggested that the said service be included in the specified services under notification No.18/2009 on which exporters are being allowed refund, when the services are used in connection with export of goods.

9. Cenvat Credit Return

Credit return is required to be filed under Rule 9(9) of Cenvat Credit Rules, 2004 read with notification no.33/2005- NT dated 20.10.2005, within one month of end of half year.

However, service tax return ST-3 under rule 7 of the Service Tax Rules, 1994 (as amended) is to be filed separately within 25 days of end of half year.

Both the returns are in separate formats. Though the service tax return format has been revised from time to time, the credit return format (issued under excise notification) is not modified. Thus, technically two separate returns are to be filed in case credit is availed.

It appears that requirement of filing separate return under rule 9(9) of Cenvat Credit Rules, 2004 is superfluous, particularly when the required details are being submitted by way of ST-3 return.

It is therefore, suggested that the requirement of filing of separate return under rule 9(9) of Cenvat Credit Rules, 2004 be dispensed with.

10. Impact of change in scope of Business Auxiliary Services with reference to job work

Business auxiliary service [Section 65 (19)], provides that only those processes which result in the manufacture of excisable goods (as defined in the Central Excise Act) are excluded from the purview of Business auxiliary service.

Amendment is welcome but to decide the excisability of goods, the test of marketability is to be satisfied.

Therefore, it is necessary to clarify that if all the conditions of excisable goods are satisfied except marketability, the job working activity would remain excluded from service tax purview.

For example, a job worker of plastic components processes the plastic granules and convert them into plastic components in unfinished and uncompleted state. Suppose he is doing such process for SSI unit which is availing value based exemption or for area based exempted unit or for NIL rate of duty product. In that case, he would be forced to pay service tax which is not the intention of legislature.

11. Misuse of power to arrest under Central Excise

Section 13 of the Central Excise Act empowers any Central Excise Officer not below the rank of Inspector of Central Excise, with prior approval of the Commissioner is empowered to arrest any person whom he has reason to believe to be liable to punishment under Central Excise Act. It has been noted that there is no parallel provision under Service Tax or Income-tax. It has been noticed that this power to arrest is being misused in certain

Commissionerates resulting in lot of harassment to trade and industry. A threat to arrest is given to realise the dues under investigation or to realise the dues which are subjudice.

It is suggested that immediate action may be taken to avoid misuse of powers to arrest. It is also suggested that in this era of liberalization, this power to arrest may be withdrawn. The provisions relating to prosecution under sections 9, 9A and 9AA would be sufficient like in other Acts.

12. Misuse of power under section 14 of the Central Excise Act, 1944

Section 14 of the Central Excise Act gives power to issue summons to the assessee to give evidence and produce documents in enquiries conducted under the Act. This power is equally applicable to Service Tax provisions. It can be exercised by any officer above the rank of Superintendent.

It has been noted that at times this power is used to harass the assessee in as much as.

(i) Notices are issued to Director/Managing Director/Chairman though they are not directly involved in day-today business.

(ii) Notices are issued for seeking information which can otherwise be obtained through letters.

(iii) The time mentioned in notice is not adhered too. A person is called in the morning but recording of statement starts at the end of the day and continues upto late in the night.

(iv) Copy of the recorded statement is not given immediately.

(v) Summons are issued even in the cases where it is a pure question of law.

It is suggested that power given under section 14 should be exercised only when the information is not provided by the person concerned and there may be some check on use of such power. It should not be used in a routine manner resulting in harassment to the trade and industry. It is suggested that following necessary actions may be taken -

(i) Notices should not be issued to Directors/Managing Directors/Chairman in any routine manner.

(ii) Wherever it is possible to obtain the information through simple letters, no summons should be issued.

(iii) Recording of statement may start at the given time and in the normal course it should not be continued after office hours.

(iv) A copy of the statement recorded should be given to the person concerned immediately after recording of the statement.

(v) No summons may be issued in case there is a question of law.