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Tax Talk

The Monthly Service Tax Bulletin

Issue No. 7/2012 October 2012

Editorial

Shubho Vijaya. After getting rejuvinated with the positive energy during Durga Puja, we are again back to our old schedule, on our marks to file the Service Tax Return by 25th November 2012 (vide Order No. 3/2012). This return is being filled for the quarter April-June 2012, with this we now hope the half yearly return will become a history and hence forth return will be filled quarterly or even monthly. The details about which is expected once the return for the period April-June 2012 gets over. The extra time taken by the Department to upload ST Return form instilled in our minds a ray of hope that we will get an opportunity to file a new ST Return aligned with the amended Point of Taxation Rules, 2011 but the new form has disappointed us with no changes being made in the Return form at all, except the earlier form has been curtailed to three month form.

A newly inserted Section 80(2) provides that no penalty on delay payment of Service Tax on the 'Renting of Immovable Property' service is imposable if the Service Tax along with applicable interest is wholly paid within 28th November, 2012 (i.e. within 6 months from the date the Finance Bill got presidential assent). Anybody wishing to avail benefit of the above legislation should pay tax by 28th November 2012.

This Finance Act also granted exemptions with retrospective effect on Management, Maintenance or Repair of Roads and Non-commercial Govt. buildings and also to 'Club or Association' service in relation to certain projects. If anybody has paid the Service Tax since its inception till 30th June 2012, the application for claim of refund of such Service Tax paid should be filed within 28th November, 2012(Detail in page 3).

After the deletion of service specific codes, the Department officials are facing the difficulty of extracting information on revenue generation sector wise. In order to track the service tax payments, they have recommended to restore the earlier codes in the meeting held last month with the Finance Minister. The matter is being considered to restore all the earlier 119 codes along with the currently prevalent single code for payment of service tax on services which have become taxable with the introduction of negative list, for administration purpose only, by issuing a circular/communication to this effect. However it is also discussed that the service based code will be used for returns only and not for payment. Circular to this effect is yet to be issued.

A new Rule 5B inserted in Cenvat Credit Rules, 2004 vide Notification No. 28/2012-CX. dated 20.06.2012 aimed at providing refund of unutilized Cenvat Credit availed on inputs and input services, to service providers providing services under Reverse Charge mechanism but being unable to utilise the CENVAT credit against their output service tax liability, subject to procedure, safeguards, conditions and limitations as promised to be specified by the Board through Notification in the Official Gazette. Although 4 months have elapsed from the introduction of reverse charge but no notification prescribing such conditions or procedures has been issued yet. The Notification should however be issued as soon as possible to prevent the assessee from the litigation of time bar later on.

A Draft Circular F. No. 354/146/2012 dated 27th September 2012 to clarify certain doubts on the applicability of service tax on the transportation of passengers by air has been issued for public opinion. Once this Circular is issued, it can serve as a guidance tool to clarify issues for other services also.

We by this newsletter aim to benefit all section of professionals and business entities. To further facilitate the process we have been posting FAQs in all our issues. In order to help us serve you better we request you to forward your queries to the email-id office@goyalstax.com. We endeavour to solve your queries in the subsequent issues.

If any of your friend and well wisher wants to receive this newsletter, please feel free to contact us at servicetaxgoyal@gmail.com.

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DUE DATES

PAYMENT	Form	Due Date
Payment of tax liability upto 6th March 2012 on **Renting of Immovable Property** (Without Penalty)	Cash/Cheque E-Payment	28th Nov. 2012
REFUND		
Refund as per restrospective amendments made by the Finance Act 2012 (Details as on page no. 3)	Form R	28th Nov. 2012

DUE DATES

PAYMENT	Form	Due Date
Payment for Month of October, 2012 (assessee other than individual, proprietor-ship firm, partnership firm and LLP)	Cash/Cheque	5th Nov. 2012
	E-Payment	6th Nov. 2012
RETURN		
Return for the period April to June 2012 (All Assessee)	ST-3	25th Nov. 2012

Renting of Immovable Property

Renting of immovable property has been included under the list of declared services, as item (a) of the section 66E of the Finance Act 1994. By doing so the Central Government has settled down all possible future disputes on this service. Hence, post 1st July 2012 under the negative list regime, there is no dispute regarding taxability of this service. The other services in relation to renting is also covered by newly inserted definition in the rule 2(f) of the Service Tax Rules 1994, same is reproduced below along with definition of Renting, as provided in the section 65B(41) of the Finance Act 1994.

'Renting of immovable property' means "any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting". [Rule 2(f) of the Service Tax Rules 1994]

'Renting' has been defined as "allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property". [Section 65B(41) of the Finance Act 1994]

Some services are outside the scope of renting of immovable property service, either by way of inclusion in the negative list or covered in exemptions:

Items in the negative list relating to renting are as follows:-

1. Renting or leasing of agro machinery or vacant land, with or without a structure incidental to its use, relating to agriculture.
2. Renting of residential dwelling for use as residence
3. Renting out of any property by the Reserve Bank of India
4. Renting out of any property by a Government or a local authority to a non-business entity.

Exemptions available in respect of renting of immovable property:

1. Threshold exemptions up to Rs. 10 lakh is available to all service provider.
2. Services by a person by way of-

   (a) renting of precincts of a religious place meant for general public
3. Services provided to or by an educational institution in respect of education exempted from service tax, by way of-

   (a) renting of immovable property;
4. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent.

Provision prior to 1st July 2012 :

The definition of Taxable Service was provded in section 65(105)(zzzz) of the Finance Act 1994, as follows :

"taxable service" means any service provided or to be provided to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce;

Explanation 1 - Immovable property includes-

i. building and part of a building, and the land appurtenant thereto;

ii. land incidental to the use of such building or part of a building;

iii. the common or shared areas and facilities relating thereto; and

iv. in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

v. vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;

Immovable property does not include-

a. vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes

b. vacant land, whether or not having facilities clearly incidental to the use of such vacant land

c. land used for educational, sports, circus, entertainment and parking purposes

d. building used solely for residential purpose and the building used for the purpose of accommodation, including hotels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2 - An immovable property partly for use in the course of furtherance of business or commerce and partly for residential or any other purpose shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

The definition of renting of immovable property was provided in section 65(90a) of the Finance Act 1994, as follows :

"renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include –

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation 1—For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;

Explanation 2— For the removal of doubts, it is hereby declared that for the purposes of this clause "renting of immovable property" includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property;

The above definition of taxable service was amended on 01.07.2010 with retrospective effect from 1.06.2007.

The **original definition was** worded as follows:

"*taxable service" means any service provided or to be provided; to any person, by any other person, in relation to renting of immovable property for use in the course or furtherance of business or commerce..........*

This change in definition was brought in backdrop of the pronouncement of Delhi High court on 18.04.2009 regarding scope of service tax on renting of immovable property service in the matter of Home Solutions Retail India Ltd. Vs UOI whereby it was upheld that the definition meant to cover only "the service in relation to renting" and "mere renting" was not covered in the definition.

Further the scope of taxable service was also expanded by the Finance Act, 2010 by inclusion of Clause *v* in the explanation of immovable property (as stated above). But tax on such inclusion will be levied only from 1st July, 2010 and not prior to that.

Finance Act / Recent Update

NO PENALTY ON RENTING OF IMMOVABLE PROPERTY :

Considering the retrospective change in the definition and disputes thereon in the "Renting of Immovable Property Service"since beginning, newly inserted section 80 (2) in the Finance Act 1994 waives off penalty, if anybody pays service tax liability as on 6th March,2012 along with interest within 6 months of insertion of section i.e.28th November, 2012. The wordings of the section 80(2) is as under:

Section 80 (2) : Notwithstanding anything contained *in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.*

This might be considered as carrot given by the Government to all the person who are waiting for the judgement of Hon'ble Supreme Court, we like to remind here that the matter is still pending before the Supreme Court, in which the Court has granted stay for 50% of tax liability and asked to deposit 50% liability till finalisation of the case. Anyway still it is a good option for the person who wants to end litigation on the subject.

RETROSPECTIVE EXEMPTION AND REFUND :

The Finance Act, 2012 has provided retrospective exemption to the following services from service tax liability for the period mentioned under the respective points. In case anybody has already paid the service tax for the period, he may file a refund of the same. The refund can be filed within 28th November, 2012, i.e. six months from date on which the Finance Act, 2012 received the assent of the president.

a) Services in respect of Management, Maintenance or Repair of Roads provided during the period of 16th June 2005 to 26th July, 2009 [Section 97 of the Finance Act 1994]

b) Services in respect of Management, Maintenance or Repair of Non-Commercial Government buildings provided during the period of 16th June 2005 to 30th June 2012 [Section 98 of the Finance Act 1994]

c) Services provided in respect of project being a project of any common facility set-up for treatment and recycling of effluents and solid wastes, with financial assistance from the Central Government or a State Government, provided by a club or an association including registered co-operative societies during the period starting on 16th June 2005 to period prior to notification dated 25th July 2011 [Section 145 of the Finance Act 1994]

Draft Circular

Issue (a) : Whether service tax of 4.944% (60% abatement) will apply to related charges such as reconfirmation fee, upgrade fee, date change, additional collection, etc., levied by airlines to passengers?

Clarification: These charges could be levied in either of the following manners: (a) as a consolidated charge without any break-up; (b) with break-up for individual services or at a point later to the initial booking. In case of (a) above the provisions of section 66F will apply and the service that imports the essential character will determine the applicability of both the Place of Provision of Services (POP) Rules as well as abatement. In the case of (b) above, the individual components will need to be analyzed on their respective merits.

Various charges collected by airlines from a passenger can be broadly put into two categories: (a) charges which are directly related to the journey; and (b) charges which are not so related. Charges which are directly related will be covered by abatement. Re-confirmation fees, date-change fee, upgrade fee, preferred seat charges, additional collection in the nature of differential ticket fare towards the journey and unaccompanied minor charges are directly related charges. For the charges which are not directly related to the particular journey, abatement is not available. Sky-meal-on-order and escort charges are not directly related to the journey.

Issue (b): Whether abatement meant for transport of passenger by air service, is applicable for excess baggage charges?

Clarification: Where a passenger embarks on an international journey, excess baggage charges are not leviable to service tax as the place of provision of such service will be outside India under Rule 10 of POP Rules. However, in the case of journey within the taxable territory, excess baggage charge is leviable to service tax without abatement. Similar will be the tax treatment for pet charges.

Issue (c): When a passenger puts a ticket for refund, whether full rate of 12% will apply to cancellation fee, refund fee, no show fee, since the passenger is not availing air transportation service?

Clarification: In terms of section 66B of the Finance Act, 1994, service tax is leviable on service provided or agreed to be provided. Thus service tax becomes payable when a booking is made, i.e. when the service is agreed to be provided, the subsequent cancellation of the ticket does not take it outside the purview of tax absolutely.

However, Rule 6(3) of the Service tax Rules, 1994, provides that where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, the assessee may take credit of such excess service tax paid by him, if the assessee,– (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

Thus the amount retained by the airlines in the event of cancellation of ticket, out of the original fare will remain liable to be taxed as originally taxed and hence is entitled to abatement applicable in this regard. However, if the ticketed amount is fully refunded to the passenger, but no-show (late cancellation charges) or cancellation fee is separately collected through an invoice or bill, abatement will not be applicable. Here, cancellation fee takes the nature of administrative charge.

Issue (d): (i) whether service tax will apply on related fees/charges on journeys starting outside India, even if the transaction for related charges is made in India? ; (ii) Whether service tax will apply on related fee charges on journeys starting in India, even if the transaction for related charges is made outside India?

Clarification: According to Rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey. Therefore, if place of embarkation of passenger is located within the taxable territory, service tax is leviable on the gross amount payable for such continuous journey, irrespective of where the ticket is booked and where fees/charges are collected. If the place of embarkation of a passenger on a continuous journey falls outside the taxable territory, service tax is not leviable, irrespective of where the tickets are booked and where fees/charges are collected. However, as mentioned at (a) above, only such charge will be determined under Rule 11 of POP as are directly related to the continuous journey. The POP of other charges will be judged on their own merits. ***[F. No.354 /146/2012 dated 27/09/2012]***

Frequently Asked Question

Q. Whether service tax return will hence forth be required to be filled Quarterly?

A. Presently as per Notification No. 47/2012-ST all assessees are required to file quarterly return for the period of April-June 2012. The due date for this quaterly return is 25th November, 2012.

Further we like to draw kind attention on the following proposed amendements by the government in the Service Tax Rules, 1994 vide Draft circular No. F No 201/05/2011-CX.6 to align the payment and return cycles as follows:

a) Quarterly payment and quarterly return for assesses who had paid Service Tax of Rs 25 lakhs or less including the payments made by utilizing the CENVAT credit, during the preceding financial year.

b) Monthly payment and monthly return for all other assesses who had paid Service Tax of more than Rs 25 lakhs including the payments made by utilizing the CENVAT credit, during the previous financial year.

c) Quarterly payment and quarterly return for all the new assessees.

But till date no amendment has been made in the Service Tax Rules, 1994. But going with in line the draft circular, one can easily understand that the half yearly return will no more find place in service tax scenario and all have to fill return in future either monthly or quarterly.

Recent Amendment - Return

The CBEC has extended the due date of filing return for the period April, 2012 to June, 2012 from 25th October, 2012 to 25th November, 2012 vide Order No. 3/2012 as given below:

ORDER NO: 3/2012 Dated : 15 Oct. 2012

In exercise of the powers conferred by sub-rule(4) of rule 7 of the Service Tax Rules, 1994, the Central Board of Excise & Customs hereby extends the date of submission of the return for the period 1st April 2012 to 30th June 2012, from 25th October, 2012 to 25th November,2012.

The circumstances of a special nature which have given rise to this extension of time are as follows:

a) ACES will start releasing the return in Form ST3 in a quarterly format, shortly before the due date of 25th October, 2012.

b) This will result in all the assesses attempting to file their returns in a short time period, which may result in problems in the computer network and delay and inconvenience to the assesses.

Now the ST-3 requires three months details only as opposed to the old ST-3 which required six months details. Technically the new ST-3 form issued by the department for the relevant period cannot be filled directly online, it has to be filled offline and then uploaded for submission as quoted at the aces site *"As online version of ST 3 return for the Quarter April - June, 2012 is not available, please use the offline utility of ST 3 Return to upload your return"*

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If undelevered, please return to :
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