Tax Talk
The Monthly Service Tax Bulletin

Issue No. 8/2012

November 2012

Editorial

Service tax obtained a new life by arising from the ashes of its predecessor like the Phoenix bird in Greek mythology. The year 2012 will go down in history of service tax as the year of regeneration. The negative list concept has been modeled on the basis of positive list approach. As the year comes to an end we can only hope that the turbulence and confusion created by new provisions enacted also ends and are not carried forward to the next year.

One of the most affected services in the field of Service Tax is Works Contract service. There are still a lot of assesses who have queries regarding the provisions and are facing difficulties while discharging the liability of service tax as applicable under partial reverse charge or joint charge. We have attempted to revisit the provisions relating to Works Contract service and present it to you in a user friendly manner.

As per Circular No. 161/12/2012 dated 6th July, 2012, CBEC had announced a single accounting code 00441089 for all services with effect from 1st July, 2012. Now for the purpose of statistical analysis, the Board has restored the service specific old accounting codes vide Circular No. 165/16/2012 dated 20th November, 2012. A list of 120 descriptions of services for the purpose of registration and also accounting codes corresponding to each description of service for payment of service tax has been provided as an annexure to this circular.

We all must have already filed the service tax return in Form ST-3 for the quarter April to June 2012. If somebody has not yet filed the return, he should do it without any further delay because late fee for late filling of return will be stiff beyond a delay 30 days. We are eagerly waiting for the announcement of the due date for filing of the next return(s). No instruction in form of Circular or Notification has been received as yet in relation to filing of return for the period after June 2012. It is anticipated that a notification/ circular/order will soon be issued in this regard thereby settling down the anxiety of all assesses.

It is learnt that the CBEC Chairman had called for a meeting of Chief Commissioners on 26th November 2012, mainly to discuss the subject of 'Revenue'. This is the third time in this year that a Chief Commissioners' conference was organized by CBEC which is normally an annual affair. Obviously, the Revenue targets are ridiculously high and the hope of ever reaching anywhere near the target is bleak. We are feeling so because the economy is performing below expectations. Under these circumstances achieving the budgeted target will be a challenge for the government. In the meeting the Board has also announced promotion of 16 Commissioners as Chief Commissioners along with transfer of many Chief Commissioners. So, after the meeting, many of the Chief Commissioners do not hold the same place as they were holding on that day.

I was honored to represent MCC Chamber of Commerce & Industry being Co-chairman of Indirect Tax Committee of the Chamber along with other members to present the Pre-Budget Memorandum for Union Budget 2013-14 before the Revenue Secretary Shri Sumit Bose, where CBEC Chairperson Ms. Praveen Mahajan, CBDT Chairperson Dr.Poonam Kishore Saxena with other senior officials were also present on the 29th November, 2012 in New Delhi. It was really a delightful and enriching experience. We hope that the Union Budget 2013-14 will carry the suggestions of the chamber which will be beneficial for all.

Although the Finance Minister has not clearly said that GST would be rolled out from 1st April 2013, his statements regarding early passage of the Constitutional Amendment Bill and introduction of GST legislation by the end of this year have made everyone hopeful that the new indirect regime might see the light of the day before the country goes for general elections in 2014. At the moment, the biggest issue in GST roll-out is lack of consensus not just between the Centre and States but also among various States. In the best case scenario, the Constitutional Amendment Bill after incorporating suggestions of the Standing Committee and of the States can be expected to be tabled in parliament in the winter session in December. However, even in such a case, it would be very difficult to introduce GST next year.

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

CA Sushil Kr Goyal

DUE DATES

PAYMENT	Form	Due Date
Payment for Month of November, 2012 (assessee other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th Dec. 2012
	E-Payment	6th Dec. 2012
RETURN	**Form**	**Due Date**
April - June 2012 Return (with a late fees of Rs.500/-)	ST-3	9th Dec. 2012
April - June 2012 Return (with a late fees of Rs.1000/-)	ST-3	24th Dec. 2012*

* For delay beyond 24th Dec.2012 Rs. 1000+100/day (Maximum Rs. 20,000/-)

Works Contract

Works contract service is one of the services which has been impacted the most after the advent of negative list regime. The legal provisions relating to Works Contract have undergone a horde of changes. One of the burning issues affecting Works contract service is the partial reverse charge provision created wherein subject to certain conditions 50% of the service tax payable on an invoice is to be paid by service provider and balance 50% is to be paid by service receiver.

The liability cast upon the service receiver remains intact even if the service provider charges service tax and collects the same at full rate in the invoice raised for Works contract services rendered. That is to say even if the service provider erroneously charges service tax at full rate for any service under reverse charge or partial reverse charge, the service receiver cannot dispense its liability by paying the service tax amount to the service provider. The stand usually taken by assessee is that they had already paid service tax to service provider as it was charged in the invoice. But the fact remains that under the service tax provisions, for services under reverse charge/partial reverse charge, the liability has been cast on the service receiver and such liability can only be settled by service receiver paying service tax under their registration number to the Government Exchequer.

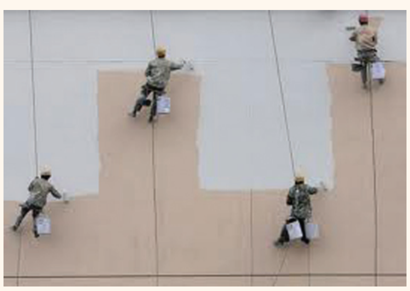
Under the circumstances the service receiver has to keep a track of all the services received and identify which of such services would fall in the ambit of Works contract service. Hence the definition and understanding of Works contract service becomes imperative for complying with the obligations under service tax provisions contained in Finance Act, 1994 and rules made there under.

What is Works Contract Service?

*"Works Contract" means a contract wherein **transfer of property in goods** involved in the execution of such contract is **leviable to tax as sale of goods** and such contract is for the purpose of carrying out **construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration** of any **movable or immovable property** or for carrying out any other similar activity or a part thereof in relation to such property.* [Section 65B (54) of Finance Act, 1994]

Therefore for a service to be a Works contract **four conditions** should stand fulfilled:-

1. The contract should be composite i.e. there should be transfer of goods along with rendering of some service
2. The transfer of goods should be leviable to tax as sale of goods i.e. Respective State VAT Acts etc.
3. The service rendered should be either of the following:-
   a) Construction Service
   b) Erection Service
   c) Commissioning Service
   d) Installation Service
   e) Completion Service
   f) Fitting out Service
   g) Repair Service
   h) Maintenance Service
   i) Renovation Service
   j) Alteration Service
   k) Any other similar activity or a part thereof in relation to such property
4. The service should be related to movable or immovable property.



Hence an assessee needs to firstly decide whether the service they are receiving falls under the ambit of Works Contract. If the answer is in affirmative then the value on which service tax has to be paid has to be determined.

Whether subcontractor is liable to pay service tax on exempted Works Contract for main contractor?

If the subcontractor is rendering services covered under the category of Works Contract service and the main contractor is also rendering Works Contract service which is not taxable, then the sub contractor shall also enjoy exemption from tax.

But if the services of subcontractor is not covered under works contract then he is liable to pay service tax.

What would be the value on which service tax shall be payable?

Rule 2A of Service Tax (Determination of Value) Rules, 2006 lays down the principles for valuation of service portion in execution of Works contract. There are two options under which an assessee can value the service portion involved in execution of Works Contract. Under **Option 1** the value of service can be determined by deducting the value of material transferred from the gross value charged under the contract. Service tax is payable at full rate on service portion. Under **Option 2** the service tax can be paid on 40%/60%/70% of the total value of contract, subject to the conditions enshrined in the above mentioned rule. It is not mandatory for a Service provider and a Service Receiver to follow the same option for purpose of valuation of a particular transaction classified as Works Contract i.e. Valuation carried out by service provider and receiver are independent of each other in case of reverse charge.

How to value those Works Contract which are incomplete as on 1st July 2012?

For contracts which are in progress as on 1st July 2012, Point of Taxation for some part of contract may fall before 1st July 2012 and for other parts it may fall after the above date. Tax has to be paid as per provisions applicable on the date on which Point of Taxation falls.

Who will be liable to pay service tax on Works Contract service?

Rule 2(d) of the Service Tax Rules, 1994 defines the persons liable to pay tax. In the said Rule the following has relevancy to the issue at hand. ……

(F) in relation to services provided or agreed to be provided by way of:- ………

(c) service portion in execution of a works contract-

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively. ….

Further Notification No. 30/2012-ST dated 20.06.2012 states that both the service provider and receiver will pay 50% of service tax payable each in case the reverse charge is triggered.

Hence we can conclude the following after reading the above provisions:

Service Provider	Service Receiver	Service provider	Service Receiver
Individual/HUF/ Partnership Firm/ AOP/LLP	Body Corporate (in taxable territory)	50%	50%
Individual/HUF/ Partnership Firm/AOP/LLP	Body Corporate (in Non taxable territory)*	100%	–
Individual/HUF/ Partnership Firm/ AOP/LLP	Non Body Corporate (in taxable territory)	100%	–
Individual/HUF/ Partnership Firm/ AOP/LLP	Non Body Corporate (in Non taxable territory)*	100%	–
Company/Society/ Artificial Judicial Person	Any person	100%	–
Government/Local Authority	Any person	–	100%

* If taxable as per place of provision of service rules.

Restoration of Accounting Codes

The CBEC has restored the earlier accounting codes for payment of service tax by way of circular 165/16/2012–ST dated 20th November 2012.

Earlier CBEC had come up with a circular 161/12/2012–ST dated 6th July 2012, thereby introducing new codes for payment of service tax under the head 'All Taxable Services' for service tax, interest (Other receipt), penalty and deduct refunds in the wake of Negative List Concept made effective w.e.f. 1st July 2012, i.e. to say, all payment of service tax to be made for liability arising on and from 1st July 2012 had to be done under the new codes. The service specific codes were operating side by side for payment of liability arising for the period before 1st July 2012.

Under the above arrangement, the revenue department found it difficult in getting information on sector wise breakup of service tax paid due to single accounting code. To overcome such hurdle, Circular No. 165/16/2012–ST was issued restoring the earlier accounting codes.

The circular provides a list of 120 descriptions of services for purpose of registration and accounting codes. All registration taken under the category of 'other than negative list' shall have to be amended to obtain registration under the description of service (list enclosed in the annexure to the circular) conforming to the nature of service rendered.

The assessee will have to reclassify their services in accordance with the description provided for purpose of payment and registration. The list of 120 services has been derived from the positive list based selective approach basis of taxation prevalent before 1st July 2012. Those services which have not been specifically mentioned in the Annexure (Example- Director Services) will fall under the residual category 'Other taxable services'. Relevant extract of the circular has been given below for your reference. The full text and Annexure can be downloaded from *www.servicetax.gov.in*.

Circular No.165/16/2012 -ST

***Subject**: Restoration of service specific accounting codes for payment of service tax - regarding.*

1. *Negative List based comprehensive approach to taxation of services came into effect from the first day of July, 2012. Accounting code for the purpose of payment of service tax under the Negative List approach ["All Taxable Services" – 00441089] was prescribed vide Circular 161/12/2012 dated 6th July, 2012.*

2. *Subsequent to the issuance of the Circular, suggestions were received from the field formations that the service specific old accounting codes should be restored, for the purpose of statistical analysis; also it was suggested that list of descriptions of services should be provided to the taxpayers for obtaining registration. These suggestions were examined and a decision has been taken to restore the service specific accounting codes. Accordingly, a list of 120 descriptions of services for the purpose of registration and accounting codes corresponding to each description of service for payment of tax is provided in the annexure to this Circular.*
3. *Descriptions of taxable services given in the annexure are solely for the purpose of statistical analysis. On the advice of the office of the C & AG, a specific sub-head has been created for payment of "penalty" under various descriptions of services. Henceforth, the sub-head "other receipts" is meant only for payment of interest payable on delayed payment of service tax. Accounting Codes under the sub-head "deduct refunds" is not to be used by the taxpayers, as it is meant for use by the field formations while allowing refund of tax.*
4. *Registrations obtained under the positive list approach continue to be valid. New taxpayers can obtain registrations by selecting the relevant description/s from among the list of 120 descriptions of services given in the Annexure. Where registrations have been obtained under the description 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description/s from the list of 120 descriptions of services given in the Annexure. If any applications for amendment of ST-1 are pending with field formations, seeking the description 'all taxable services', such amendment may not be necessary and the officers in the field formations may provide necessary guidance to the taxpayers in this regard. Directorate General of Systems will be making necessary arrangements for display of the list of 120 descriptions of services and their corresponding Accounting Codes in Form ST-1 and Form ST-2 as may be necessary.*

Amendment in ST-1

As old accounting codes are now restored vide Circular No. 165/16/2012-ST, to facilitate such change, ST – 1 has been amended vide Notification No. 48/2012-ST dated 30th November 2012, to substitute the table in Serial No. 7 with the below given table.

Notification No. 48/2012–ST dated 30th November, 2012

In exercise of the powers conferred by sub-section(1) read with sub-section (2) of Section 94 of the Finance Act, 1994(32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:-

1. (1) These rules may be called the Service Tax(Fifth Amendment) Rules, 2012.
   (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Service Tax Rules, 1994, in Form ST-1,-
   a) *in serial no.7, for the table, the following table shall be substituted, namely:-*

Sl. No.	***Description of taxable service (Choose from ANNEXURE)***
(1)	*(2)*

   b) *after the ACKNOWLEDGEMENT, the following Annexure shall be inserted.*

(Due to space shortage, annexure having list of services is not given.)

Frequently Asked Question

Q. I am a service recipient of services under reverse charge and liable to pay service tax thereon. Am I required to amend my registration certificate under all the services for which I am liable to pay service tax under reverse charge?

A. There are various services under which partial/full reverse charge had been introduced in addition to an already existing list of notified services, vide Notification No. 30/2012-ST dated 30th June 2012. Under the above notification service recipients are liable to pay service tax on services received by them subject to conditions specified there under.

The Circular 165/16/2012-ST dated 20th November 2012 has specifically instructed the assessees to amend their registration certificate and include all services under which service tax is payable in their registration certificate. Hence irrespective of the status of the assessee (service provider or receiver), amendment of the registration certificate is required to be carried out so as to ensure that their registration certificate in form ST-2 reflects all the services under which service tax is payable by such assessee.

Q. Are the codes for payment of service tax as service recipient same as that prescribed for service provider?

A. The above mentioned Circular has also restored the old service specific accounting codes with some modifications for purpose of payment. Such service specific Accounting codes are to be used by all assessees, notwithstanding the fact whether service tax is payable as a provider or receiver. Therefore the accounting codes for a particular service shall be used for payment of service tax liable to be paid under that service both by provider and receiver as applicable.

Q. I am liable to pay service tax and in this regard, I am liable to take registration. While filling the Form ST–1 online in the service list "Other than the negative list" category is only displayed whereas I am required to obtain registration under two categories of service. What should I do?

A. Modification in aces.gov.in in Form ST–1 and ST–2 is under progress in light of the Board's Circular restoring the service wise accounting codes. This may take some time and hence no option but to wait till the site becomes modified to accommodate the services based on codes. However, if the same is urgently required, he may apply under "Other than in the negative list" category.

BOOK POST

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