

ST : Amendment in Point of Taxation Rules

Notification No.25/2011 – Service Tax, dated 31-3-2011

G.S.R. (E).- In exercise of the powers conferred by clause (a) and clause (hhh) of 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 Point of Taxation Rules, 2011, namely:-

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. In the Point of Taxation Rules, 2011 (hereinafter referred to as the “said rules”), for rule 3, the following rule shall be substituted, namely:-

“3. Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, „point of taxation“ shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

3. In rule 4 of the said rules,-

(i) for the words “change of rate”, wherever they occur, the words “change in effective rate of tax” shall be substituted;

(ii) for the words “change of rate of tax” or “change in tax rate” or “change of tax rate”, respectively at both the places where they occur, the words “change in effective rate of tax” shall be substituted;

(iii) after sub-clause (iii) of clause (b), the following *Explanation* shall be inserted, namely:-

“Explanation.- For the purposes of this rule, “change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.”.

4. For rule 6 of the said rules, the following rule shall be substituted, namely:-

“6. Determination of point of taxation in case of continuous supply of service.-

Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the “point of taxation” shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation 1. – For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Explanation 2.- For the purpose of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

5. For rule 7, the following rule shall be substituted, namely:-

“7. Determination of point of taxation in case of specified services or persons.-

Notwithstanding anything contained in these rules, the point of taxation in respect of,-

(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be:

Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

Provided further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of

account of the person receiving the service or date of making the payment whichever is earlier.

6. For rule 9, the following rule shall be substituted, namely:-

“9. Transitional Provisions.- Nothing contained in this sub-rule shall be applicable,-

(i) where the provision of service is completed; or

(ii) where invoices are issued

prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.”.