Point of Taxation Rules, 2011

Enacted vide Notification No. 18/2011-Service Tax, dated 01.03.2011, effective w.e.f. 1st April, 2011[1].

The Rules prescribes the provisions for determining the applicable of rate of tax considering different events viz., provision of services, issuance of invoice, and receipt of payment. A sincere effort has been made to summarize the scenario post amendment vis-à-vis earlier scenario in tabulation as shown below with suitable clarifications, wherever necessary:

<table>
<tr><th colspan="4">Rule 3 and Rule 4 of PoTR, 2011 – General Provisions</th></tr>
<tr><th></th><th></th><th>Point of Taxation</th><th>Credit Utilization</th></tr>
<tr><td rowspan="2">Scenario before 1st April, 2011</td><td>Legal Provision</td><td>Effective rate at the time of provisioning of service (i.e. service rendering)</td><td>Cenvat Credit allowable on "payment of value for services".</td></tr>
<tr><td>Reference</td><td>Section 67 of the Finance Act, 1994 and as decided under Reliance Industries v. CCE 2008-IST-76-CESTAT-AHM & Krishna Coaching Institute 2009 (14) STR 18 (Tri-Del.)</td><td>Rule 4(7) of the CCR, 2004.</td></tr>
<tr><td rowspan="2">Post Amendment Scenario</td><td>No change in rate of tax**</td><td>(a) ID or PD, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service (as per Rule 4A[2]).
(b) Date of completion of the provision of service or payment, if the invoice is not issued within the prescribed period as above.
<table>
<tr><th>Conditions</th><th>Point Of Taxation</th></tr>
<tr><td>ID – as per Rule 4A</td><td>Earlier of ID or PD</td></tr>
<tr><td>ID – not as per Rule 4A)</td><td>Date of Completion of Service or PD</td></tr>
</table>
Expl. 1: Proportionate Advance/ Invoice: Rules shall apply to the extent the amount covered under such invoice or advance.</td><td rowspan="2">Cenvat credit will be allowed on "receipt of invoice"
- if payment of value of input service remains unpaid for 3 months from the invoice date, the amount of credit initially availed needs to be paid.
- The amount so paid will be subsequently available as credit upon payment of value of input service and service tax thereon.</td></tr>
<tr><td>Reference</td><td>Rule 3(a) and Rule 3(b) of the PoTR, 2011.</td></tr>
</table>

Illustration based on Rule 3(a) and Rule 3(b) of PoTR, 2011

Comp. of Service	ID	PD	Point of Taxation	Remarks
4/10/11	4/20/11	30-Apr-11	20-Apr-11	Invoice issued in 14 days and before receipt of payment
4/10/11	4/26/11	30-Apr-11	10-Apr-11	Invoice not issued within 14 days and payment received after completion of service
4/10/11	4/20/11	15-Apr-11	15-Apr-11	Invoice issued in 14 days but payment received before invoice
4/10/11	4/26/11	April 5, 2011 (part) and 25-Apr-11	5-Apr-11 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

[1] *While the rules shall come into force from 01.04.2011, an option has been given to the assessee (vide Notification No. 25/2011-ST dated 31.03.2011) under rule 9 to pay tax on payment basis till 30.06.2011, where the provision of services is completed or invoice has been issued before 30th June, 2011.*

[2] *Rule 4A of Service Tax Rules, 1994 (post-effect notification No. 26/2011-ST dated 31.03.2011): The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.*

<table>
<tr><th></th><th></th><th>Point of Taxation</th><th>Credit Utilization</th></tr>
<tr><td rowspan="2">Post Amendment Scenario</td><td>Change in rate of tax*</td><td>
<u>Case 1: Services provided BEFORE change of rate of tax[3]</u>
<table>
<tr><th>Event Chronology</th><th>Point Of Taxation</th></tr>
<tr><td>ID & PD < DRC</td><td>Earlier of ID or PD</td></tr>
<tr><td>ID < DRC < PD</td><td>ID</td></tr>
<tr><td>PD < DRC < ID</td><td>PD</td></tr>
<tr><td>DRC < ID & PD</td><td>Rule 3 (Implied)</td></tr>
</table>
ID: Invoice Date, PD: Payment Date (includes advance), DRC: Date of Rate Change

<u>Case 2: Services provided AFTER change of rate of tax[4]</u>
<table>
<tr><th>Event Chronology</th><th>Point Of Taxation</th></tr>
<tr><td>ID & PD < DRC</td><td>Earlier of ID or PD</td></tr>
<tr><td>ID < DRC < PD</td><td>PD</td></tr>
<tr><td>PD < DRC < ID</td><td>ID</td></tr>
<tr><td>DRC < ID & PD</td><td>Rule 3 (Implied)</td></tr>
</table>
ID: Invoice Date, PD: Payment Date (includes advance), DRC: Date of Rate Change
</td><td>
Continued …
<u>Reverse Charge</u>:
Where service tax is payable under reverse charge, the Cenvat credit will be allowed only upon payment of value of input service and service tax thereon.

<u>Transition Provision:</u>
As a transition provision, for invoices issued prior to 1 April 2011, Cenvat credit will continue to be available upon payment of value of input service and service tax thereon.
</td></tr>
<tr><td>Reference</td><td>Rule 4(A) and Rule 4(B) of the PoTR, 2011.</td><td>Rule 4(7) of the CCR, 2004.</td></tr>
</table>

***** B/w provision of services vis-à-vis 'issuance of invoice' or 'receipt of advance'.

[3] ***Rule 4(A) of PoTR, 2011:*** *(I) where 'the invoice for the same has been issued and the payment received' after the change of rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier;* ***OR*** *(II) where the invoice has also been issued prior to change in tax rate but the payment is received after the change of rate, the point of taxation shall be the date of issuing of invoice;* ***OR*** *(III) where the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the point of taxation shall be the date of payment;*

[4] ***Rule 4(B) of PoTR, 2011:*** *(I) where the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, the point of taxation shall be the date of payment;* ***OR*** *(II) where the invoice has been issued and the payment for the invoice received before the change of tax rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier;* ***OR*** *(III) where the invoice has also been raised after the change of rate but the payment has been received before the change of rate, the point of taxation shall be date of issuing of invoice.*

In furtherance to the above general provisions governing the point of taxation, there are certain specific issues that have also been specifically dealt with under these Rules. A concise of remaining provisions of PoTR, 2011 is as under:

Rule 5 of PoTR, 2011– NO TAX on NEW SERVICES for FIRST TIME		
Applicability	**POT**	**Conditions**
- **New services** (except services covered u/r 6: continuous supply of services) brought to tax by any amendment in section 65(105) of the Finance Act, 1994 - **for the first time** (and not on the services brought to tax through the withdrawal of E/N), **IF**	No Tax (Thus, question of POT does not arise)	ID and PD < Appl. of Tax on New Service PD < Applicability of Tax on New Service and ID **WITHIN** 14 days (Per Rule 4A)
Note: If both the ID and PD occur after the applicability of service tax on the new service, the POT shall be determined in accordance with Rule 3 & Rule 4, as discussed above. The provisions do not applicable on the "continuous supply of services (Rule 6)".		

Rule 6 of PoTR, 2011 – Continuous Supply of Service	
Notwithstanding anything contained in Rules 3, 4 or 8; in case of continuous supply of services[5], the 'point of taxation' shall be	
Cases (Situations)	**Point of Taxation**
ID (as per Rule 4A - within 14 days from the date of completion of services*)	ID
ID (not as per Rule 4A - within 14 days from the date of completion of services*)	Date of completion of services
PD before issue of invoice/Completion of service*	PD (Each payment case)
***Completion of Services shall mean the 'part completion'** when payment (in part or whole) is liable to be made by the service receiver, periodically or from time to time, as per the terms of contract.	

Rule 7 of PoTR, 2011 – Services to Specified Persons		
Earlier, Rule 7 governed the point of taxation of the services provided to the 'Associated Enterprise (AE)'. However, the rule has completely been replaced and now provides the POT provisions in respect of services of '***specified persons'***.		
Specified Persons	**Point of Taxation**	
The services covered by sub-rule (1) of rule 3 of **Export of Services Rules, 2005**	PD (Payment date in all cases)	*Condition:* 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.

Rule 8 of PoTR, 2011 – Copyrights, Trademarks etc	
Cases (Situations)	**Point of Taxation**
ASCERTAINABLE - Whole amount of the consideration, when service was performed	Rule 3 and Rule 4 of PoTR, 2011
NOT ASCERTAINABLE - Whole amount of the consideration, when service was performed	Earlier of ID or PD (Each Case)

Rule 9 of PoTR, 2011 - Savings
While the rules shall come into force from 01.04.2011, an option has been given to the assessee (vide Notification No. 25/2011-ST dated 31.03.2011) to pay tax on payment basis till 30.06.2011. *Continued …*

[5] ***Rule 2(c) of the PoTR, 2011*** *defines the term "continuous supply of service" as:*

*(i) Any service provided or to be provided continuously by a service provider under **a contract for a period more than 3 months 'OR'***

*(ii) Such services which the **central government prescribes by a notification** to be issued in the nature of continuous supply of services.*

Rule 7 of PoTR, 2011 – Services to Specified Persons		
Specified Persons	**Point of Taxation**	
Persons, where the obligation to pay tax is on the **service recipient in terms of rule 2(1)(d)** of the Service Tax Rules, 1994 in respect of services notified under **section 68(2) of the Finance Act, 1994** **(i.e. Cases of Reverse charge of Service Tax)**	PD (Payment date in all cases)	*Condition:* 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.
Individuals or proprietary firms or partnership firms providing taxable services in the nature of: **1. Architect** **2. Interior Decorator** **3. Consulting Engineer** **4. Chartered Accountant** **5. Cost Accountant** **6. Company Secretary** **7. Scientific & Technical Consultancy** **8. Legal Consultancy**		*No Condition*

Rule 9 of PoTR, 2011 - Savings

In Case of Services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued up to 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.

Consequential Amendment – Rule 4A of Service tax Rules, 1994

Changes have also been made in the Service Tax Rules, 1994 vide notification No. 26/2011-ST dated 31.03.2011 and have a close relationship with the Point of Taxation Rules as follows:

(i) The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.

(ii) If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. However, concession is not available for bad debts.

Author's Note: *The rationale to bring the PoTR, 2011 at the time when not even a year is left for Goods and Service Tax (GST) implementation, is to edify the taxpayers about the modus operandi of the GST regime which substratum for 'point of taxation' is earliest of 'Provision of service' or'Issuing invoice' or 'Receipt of payment'. The present arrangement of GST is an imitation of the PoTR, 2011 with some minor variations (in respect to the taxability of services).*
Beyond this, your comments and suggestions shall be of utmost importance and are always welcome.

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