Tax Talk

The Monthly Service Tax Bulletin

May 2012

Editorial

Thank you very much for your overwhelming response to our First issue. “As we express our gratitude, we must never forget that the highest appreciation is not to utter words, but to live by them." We will try to be far better in our upcoming issues, fulfilling expectations of all our esteemed readers.

After filing Service Tax Return for the period October 2011 to March 2012, we have complied with the applicable service tax provisions on our part for the year 2011-12. If you have missed the due date then you can file it with applicable late fees as shown in table below. It is advisable to file the return as early as possible keeping in mind that the maximum late filing fee can extend to Rs.20000. Also we have to gear up for the proposed changes, expected to become applicable shortly. One of the changes will be filing of Returns on monthly or quarterly basis.

CBEC has proposed EST-Return, a single common one page return vide F No. 201/05/2011-CX.6 dated 13.04.2012 thereby combining the ER-1, ER-3 and ST-3 returns into a single EST return form. The introduction of single return for both Excise and Service Tax is one step forward towards the implementation of GST, but the proposed revised format of EST-Return mainly consists of service tax paid and CENVAT detail columns. As compared to the present ST-3 form the details that would be required to be filled in, has been reduced to a great extent. Hence, an assessee under service tax shall be more frequently alleged for suppression of facts by the department. Moreover, assesses having registration both under central excise and service tax are still required to file though same return but separately under Central Excise Act, 1944 and Service Tax provisions respectively. The point of having a common return seems to be lost.

Service tax was introduced in India in 1994 with only 3 taxable services. Over the years number of services had been added to the list, totaling the number of services under the service tax net to 119 and now with Finance Bill 2012, we can say that the number of taxable services has gone to infinity. As a result of this most of the industrial and corporate entity now stand exposed to service tax either as a service provider or as a service receiver under reverse charge mechanism.

We would like to draw your attention to the expected impact of GST on the Indian economy. The Hon'ble RBI Deputy Governor Mr. Subir Gokaran, at a conference on 30.03.2012 expressed that the introduction of the Goods and Service Tax (GST) would help control price rise as the proposed common tax regime would take off the demand pressures from the market. When GST will be enacted it would be a critical reform in terms of catalyzing growth. This is because it would help contain government finances and help take off demand pressures that as we have seen are contributing to inflation over the past few years.

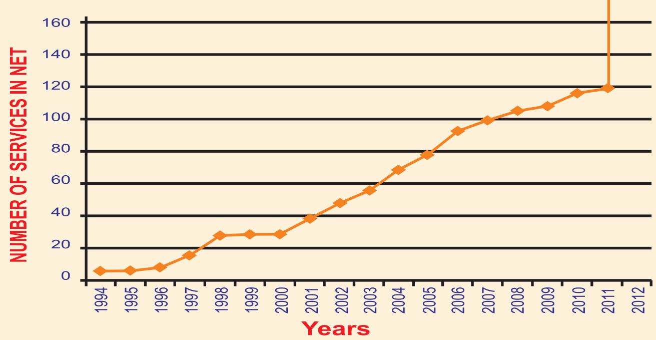
If any of your friend and well wisher wants to receive this newsletter, please feel free to contact us at servicetaxgoyal@gmail.com

CA Sushil Kr Goyal

DUE DATES		
Case	**Form**	**Due Date**
Payment for month of April (assessees other than individuals, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th May 2012
	E-Payment	6th May 2012
Half Yearly Return (with a late fees of Rs 500/-)	ST-3	10th May 2012
Half Yearly Return (with a late fees of Rs 1000/-)	ST-3	25th May 2012*

* For delay beyond 25th May 2012 Rs.1000 + 100/day (Maximum Rs.20000/-)

GROWTH IN TERM OF NUMBER OF SERVICES



Rates from Begining to till date

SERVICE TAX RATES

Rates applicable during the Period	Service Tax	Edu Cess	SHEdu Cess	Effective Rate
01st July 1994 to 13th May 2003	5%	Nil	Nil	5%
14th May 2003 to 09th Sept 2004	8%	Nil	Nil	8%
10th Sept 2004 to 17th April 2006	10%	2%	Nil	10.20%
18th April 2006 to 10th May 2007	12%	2%	Nil	12.24%
11th May 2007 to 23rd Feb 2009	12%	2%	1%	12.36%
24th Feb 2009 to 31st March 2012	10%	2%	1%	10.30%
01st April 2012 onwards	12%	2%	1%	12.36%

INTEREST RATES

Rates applicable during the Period	Interest Rate
01st July 1994 to 15th July 2001	1.5% per month or part thereof
16th July 2001 to 15th Aug 2002	24% per annum
16th Aug 2002 to 09th Sept 2004	15% per annum
10th Sept 2004 to 31st March 2011	13% per annum
01st April 2011 onward	15% or 18% per annum*

Interest is to be calculated on number of days basis. Say, due date is 5th and amount paid on 10th. In this case interest is payable for 5days only.

* Assesses whose taxable turnover doesn't exceed Rs.60 lac in the preceeding financial year shall pay interest at the rate of 15% per annum.

Feedback

A brave initiative towards bringing greater clarity in service tax. It will prove to be a boon for all the readers. Well-done !!! *- Subodh Agarwal, VP-ICAI*

The snippet approach to this made yet more complex subject (Service Tax) by the budget proposals is refreshing. A commendable endeavour. *- Prasun Bhattacharyya, Chairman EIRC*

Congratulations to you and to the entire team of Tax Talk. I am sure this Bulletin shall be eagerly awaited every month by all the readers. *- Bishnu Agarwal*

At the outset congratulations to you and your team who have done a splendid job in drafting the contents of this Service Tax bulletin. This bulletin covers answers to the most common and general queries which every person is having in the changing scenario of service tax laws !! *- Mukesh Bajaj*

Thank you very much. This will be very useful for all the professionals in any field. *- Subhagata Dey*

Yeh aapne bahut-hi achchha kam kiye. Hats off to you and your team !! Please keep it up. *- Swapan K. Ghosh*

Amidst all complexities, a clear view surely helps. This knowledge capsule will aid in understanding the subject. *- Mamta Binani*

First Issue of Your Monthly News Bulletin is excellent and will really be benefited to readers and specially to those reader who are not in practice of service Tax. *- Daya Shanker Sikaria*

Its a wonderful thing we are going to get on a monthly basis... *- Abhishek Agarwal*

Good Compilation..... *- Rajeev Kr. Agarwal*

Congratulations to U n ur team for this informative and knowledge sharing initiative. *- Nirmal Bazaz*

I have gone thru the attached bulletin and find the same very useful. *- Sushil Kumar Sultania*

Congratulations! For bringing out excellent S/Tax Bulletin called Tax Talk. It proves excellence is a habit. *- Subash Agarwal*

Eye catching Newsletter with important updates at a glance. Really good!! *- Madhulika Jain*

New EST Return for Public Opinion

The CBEC has proposed to take a dynamic step towards GST implementation by introducing the concept of a Single page common EST Return. History has it, that every new change has to face a lot of hurdles before its acceptance. There are a lot of apprehensions with regard to the new format of EST return and change in the tax payment cycles.

Central Excise assesses file monthly or quarterly returns presently, which is in align with the payment cycle. For the service tax assesses it is proposed to align the payment cycles and return cycles. It is expected that this new form of EST return would ensure timely payment.

Compared to the original ST-3 Return the proposed return is a very compressed form and the number of disclosures has been reduced drastically. Earlier we were required to provide details like exemption notification number, whose benefit has been availed, the serial no. of the abatement claimed in notification no. 1/2006, invoice details, receipt details, advance received, money equivalent of consideration received in form other money, amount received for export, amount received as pure agent etc.

As regards challan details there were separate columns for service tax paid under Rule 6(1A), 6(3), 6(4A) of Service Tax Rules, which has been combined into one column by the name of adjustment under Rules. Further no column has been provided for excess tax paid under section 73A, also no provision has been imbibed in the return for assesses to file return without paying tax as present in the former return. All Cenvat Credit Rule 6 adjustment has been compressed into a single column by the name "of amount under Rule 6 of CCR, 2004". Finally no separate columns have been proposed for Input Service Distributor. Hence it is not clear whether the ISD will continue to file the old return or some other return would be proposed.

Also till date it has not been specified whether the return is required to be digitally signed or the returns will be filed only by specifying the name of authorized representative.

EST Return for Central Excise and Service Tax

1	Period of Return		2	Central Excise/ Service Tax
3	Name of the Assessee			
4	Registration Number	Central Excise		
		Service Tax		

5	Computation of CENVAT/ Service Tax Payable							
	Description of Goods/ Services	CETSH	Exemption Claimed	Effective rate of duty/ Service Tax	Quantity Cleared	Total Taxable/ Dutiable Value	CENVAT/ Service Tax payable	Remarks

6	Details of CENVAT Credit taken and utilized						
	Details of Credit	CENVAT/ Service Tax	AED (TTA)	NCCD	ADE*	Addl Duty**	Edu. Cess***
1	Opening Balance						
2	Credit on Inputs						
3	Credit on Capital Goods						
4	Credit on Input Services						
5	Credit from inter-unit transfers in LTU						
6	Credit taken under Rule 12BB(2) of CER, 2002						
	Credit Utilization for payment:						
7	Of CENVAT on goods/ Service Tax on Output Services						
8	When inputs/ Capital goods cleared as such						
9	Of amount under Rule 6 of CCR, 2004						
10	Adjustments under STR						
11	Other payments						
12	Inter unit transfer of credit by LTU						
13	Closing balance						

7	Details of payment made							
	Description	Duty Code	Account		Challan		BSR Code	Total Paid
			Credit	Cash	Date	Number		
	CENVAT							
	Service tax							
	Education Cess							
	Secondary Education Cess							
	Cess							
	NCCD							
	Otter Duties & Cess							
	Adjustments under STR							
	Arrears Rule 8							
	Other Arrears							
	Interest Rule 8							
	Other Interests							
	Other payments							

*ADE levied under clause 85 of Finance Act 2005 ***Education Cess & Secondary education Cess

**Additional duty of Customs levied under Section 3(5) of Customs Tariff Act, 1985.

As we all can infer that few officer of the department would use this return and allege suppression, non disclosure of facts with malafide intention to evade tax in order to invoke Extended Period of Limitation. Thus the return is definitely not in favour of assesses. The proposed format has been reproduced above.

You may forward your comments on the formats and proposed amendments to Mr.V P Singh, Under Secretary by email at *dircx1@nic.in* or at *vp60singh@gmail.com* latest by 15th May 2012.

Proposed Payment / Return Period

Following amendments are proposed in the Service Tax Rules, 1994 to align the payment and return cycles:

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.

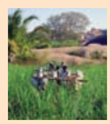
c. Quarterly payment and quarterly return for all the new assesses.

New Definitions in Service Tax

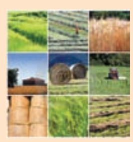
The statutory provisions relating to service tax as contained in the Finance Act, 1994 has undergone dynamic changes to the extent that Hon'ble Finance Minister Mr. Pranab Mukherjee while delivering the budget claimed that "In terms of number of pages, the law will be shorter by nearly 40 per cent". The proposed law as presented in the budget would reduce the number of existing definitions from 290 to nearly 54. We all recognise that the scope of law can only be truly understood via the definitions provided to words used to frame the law. Hence we are providing you with the proposed definitions to be contained in section 65B of the Finance Act 1994 as follows.

(1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;

(2) "**advertisement**" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person;



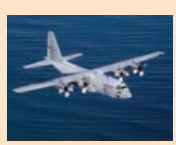
(3) "**agriculture**" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;



(4) "**agricultural extension**" means application of scientific research and knowledge to agricultural practices through farmer education or training;

(5) "**agricultural produce**" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

(6) "**Agricultural Produce Marketing Committee or Board**" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;



(7) "**aircraft**" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934;

(8) "**airport**" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994;

(9) "**amusement facility**" means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided;

(10) "**Appellate Tribunal**" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962;

(11) "**approved vocational education course**" means,—

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or

(ii) a Modular Employable Skill Course, approved by the National Council of Vocational

Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;

(12) "**assessee**" means a person liable to pay tax and includes his agent;

(13) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961;

(14) "**authorised dealer of foreign exchange**" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999;

(15) "**betting or gambling**" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring;

(16) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(17) "**business entity**" means any person ordinarily carrying out any activity relating to industry, commerce or any other business;

(18) "**Central Electricity Authority**" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948;

(19) "**Central Transmission Utility**" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003;

(20) "**courier agency**" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(21) "**customs station**" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962;

(22) "**declared service**" means any activity carried out by a person for another person for consideration and declared as such under section 66E;

(23) "**electricity transmission or distribution utility**" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a

State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

(24) "**entertainment event**" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

(25) "**goods**" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(26) "**goods transport agency**" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

(27) "**India**" means,—

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976;

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

(28) "**information technology software**" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;

(29) "**inland waterway**" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917;

(30) "**interest**" has the meaning assigned to it in clause (28A) of section 2 of the Income-tax Act, 1961;

(31) "**local authority**" means-

(a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;

(f) a development board constituted under article 371 of the Constitution; or

(g) a regional council constituted under article 371A of the Constitution;

(32) "**metered cab**" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder;

(33) "**money**" means Indian legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

(34) "**negative list**" means the services which are listed in section 66D;

(35) "**non-taxable territory**" means the territory which is outside the taxable territory;

(36) "**notification**" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

(37) "**person**" includes,—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a society,

(v) a limited liability partnership,

(vi) a firm,

(vii) an association of persons or body of individuals, whether incorporated or not,

(viii) Government,

(ix) a local authority, or

(x) every artificial juridical person, not falling within any

of the preceding sub-clauses;

(38) "**port**" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 or in clause (4) of section 3 of the Indian Ports Act, 1908;

(39) "**prescribed**" means prescribed by rules made under this Chapter;

(40) "**process amounting to manufacture or production of goods**" means a process on whichduties of excise are leviable under section 3 of the Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;

(41) "**renting**" means allowing, permitting or granting access, entry, occupation, use 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;

(42) "**Reserve Bank of India**" means the bank established under section 3 of the Reserve Bank of India Act, 1934;

(43) "**securities**" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956;

(44) "**service**" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include

(a) an activity which constitutes merely,

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.– For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,–

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.– For the purposes of this Chapter,–

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 3.– A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

(45) "**Special Economic Zone**" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

(46) "**stage carriage**" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988;

(47) "**State Electricity Board**" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948;

(48) "**State Transmission Utility**" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003;

(49) "**support services**" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

(50) "**tax**" means service tax leviable under the provisions of this Chapter;

(51) "**taxable service**" means any service on which service tax is leviable under section 66B;

(52) "**taxable territory**" means the territory to which the provisions of this Chapter apply;

(53) "**vessel**" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963;

(54) "**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, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land;

(55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.'.

Point of Taxation (Air Tickets)

Clarification on Point of Taxation Rules - Regarding some airlines collecting differential service tax on tickets issued before 1st April 2012 for journey after 1st April 2012

1. In case of online ticket booking and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket.In such a case as per Rule 4(b)(ii) of Point of Taxation Rule 2011 the point of taxation shall be receipt of payment or issuance of invoice whichever is earlier. In the case of airlines the issuance of ticket shall be construed to be equivalent to an invoice as laid down in Rule 4A of service tax rules 1994. Hence in the above situation where in the tickets are issued before 1st April 2012 and journey is undertaken after 1st April 2012 the applicable rate is 10%.
2. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier.Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April 2012 when the payment is received before 1st April 2012 by the agent.
3. However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act 1994 (as amended).

(Circular 155/6/2012-ST dated 9th April 2012)

Formation of Committee (Refund to Exporter)

A Committee has been constituted with Director General of Service Tax, Smt. Sanghamitra Panda as Chairperson, to review the scheme for electronic refund of service tax paid on taxable services used for export of goods, made operational vide Notification 52/2011-ST dated 30th December, 2011. Other members of the Committee are Commissioner of Service Tax, Mumbai-1, Shri. Sushil Solanki and Director, TRU, Shri. J. M. Kennedy.

The Committee has been instructed, as a part of the review, to

(a) evolve a scientific approach for the fixation of rates in the schedule of rates for service tax refund; and

(b) propose a revised schedule of rates for service tax refund, taking into account the revision of rate of service tax from 10% to 12% and also movement towards 'Negative List' approach to taxation of services.

(Circular 156/7/2012-ST dated 9th April 2012)

Taxability of Market Fee (Mandi Shulk)

Clarification on the taxability of market fee (also called as mandi shulk) collected by APMC (Agricultural Produce Marketing Committee)/Board for providing certain services by them using the 'market fee', in the light of Notification No.14/2004-ST.

The Board is of the view APMCs are statutory bodies created with a view to regulate agricultural produce markets. APMCs charge market fee for issuing licenses to different person. The amount so collected by the APMC, from the licensees, is used for providing among other things facilities like roads, drinking water, weighing machines, storage places, street lights, etc. in the market area.

Reportedly some field formations are inclined to take a view that services provided by the APMCs are in the nature of Business Support Service (BSS), and hence the exemption made available for BAS in relation to agriculture vide Notification No.14/2004-ST will not be applicable. As a consequence, service tax becomes leviable on the 'market fee' popularly known as '*mandi shulk',* collected by the APMC.

When examined with reference to its constitution and functions, the services provided by APMC out of the 'market fee' collected from the licensees, do not appropriately fall under the category of BSS. The distinction between BSS and BAS is explained in the instructions dated 28.02.2006 issued from F.No.334/4/2006-TRU. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. It is not possible to hold that the licensees have outsourced the development and maintenance of agricultural market to the APMC, which could have been otherwise undertaken by them, solely in their business interest. Development and maintenance of agricultural market infrastructure undertaken by APMC in accordance with the statute, is for the benefit of all users, rather than an activity solely in the interest of licensees. Hence, APMC cannot be said to be rendering 'business support service' to the licensees. 'Market fee' is not in the nature of consideration for such BSS.

As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in section 65(19) of the Finance Act, 1994 itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of Cenvat Credit Rules, 2004. Therefore, it is clarified that the services provided by the APMC are classifiable as BAS and hence covered by the exemption under Notification 14/2004-ST.

However, it is also clarified that if any other service provided by the APMCs for a separate charge(other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads.

(Circular 157/8/2012-ST dated 24th April 2012)

The text of the circulars can be availed from www.servicetax.gov.in

Frequently Asked Question

Q. When an Assesse wrongly makes the payment of service tax in the different accounting code (service specific), can the department ask him to pay tax again in the right accounting code?

A. No, in case assesse has made the payment under wrong accounting code the department cannot ask him to make payment again in the right accounting code.

This has further been clarified by the department vide Circular No. 58/7/2003 dated 20th May 2003 (Enclose below) . In case where tax liability has been discharged under wrong accounting code the matter is to be settled by PAO.

ST Circular No. 58/7/2003 dated 20th May,2003

F.No.157/2/2003 CX.4

Government of India

Ministry of Finance & Company Affairs

Department of Revenue

Central Board of Excise & Customs

Subject:- Using a wrong accounting Code for payment of Service Tax clarification- Regarding.

I am directed to say that a representation had been received by the Board raising apprehensions regarding using wrong Accounting Code for payment of Service Tax. Whether, amounts to having paid the Service Tax or not.

2. The Board has examined the issue. In this connection, I am directed to clarify that the assessee need not be asked to pay the service tax again. In such cases the matter should be sorted with the P.A.O. As regards to the cases where the assessee was asked to pay service tax again, the amount thus paid may be refunded by the concerned divisional Asst. Commissioner/ Deputy Commissioner.

Manish Mohan

Under Secretary to the Government of India

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4, B.B.D. Bag (East) Kolkata-700001