Tax Talk

The Monthly Service Tax Bulletin

June 2012

Editorial

Congratulations on Kolkata Knight Riders our home team winning the T-20 IPL tournament 2012. Hope we outshine other states in all other fields as well.

The Finance Bill 2012 has been fine tuned at the Lok Sabha and Rajya Sabha before being placed before the Hon'ble President of India for her Assent. The Finance Bill reached its maturity by way of presidential assent on 28th of May 2012. With this the finance bill will henceforth be known as the Finance Act 2012 and is now in force. Although the Finance Act is now in force but changes regarding the following will take some more time because Sections 65, 65A, 66 and 66A shall become inapplicable, whereas Sections 65B, 66B, 66C, 66D, 66E and 66F shall come into effect and section 67 and 68(2) shall be amended when the Central Government notifies such date. It is to be noted that the Government has notified the date as 1st July, 2012 vide Notification No. 20/2012-ST, 21/2012-ST, 22/2012-ST, 23/2012-ST. Hence the negative list along with other related service tax provisions shall come into force w.e.f. 1st July, 2012.

We need to be on our marks now in light of negative list being applicable from 1st July 2012. Need of the hour is to assess each head of income for service tax applicability. Further any exemption or abatement available, whose benefit could be availed of, should also be checked for applicability to the particulars of the case. Also CENVAT credit, i.e. tax paid on input, input services or capital goods used for providing the taxable service should be taken into account. Along with the above, compliance procedures like registration, amendment, return filing etc. should be executed within the time limits as provided in the service tax provisions laid down in Finance Act, 1994 and rules made thereunder to avoid stringent penal provisions.

We have been blessed with two notifications and one circular in the month of May 2012. The notifications are regarding Settlement of Cases and Compounding of Offences under the service tax provisions whereas the circular has a major impact on the Chartered Accountants, Company Secretaries, Cost Accountants among others in respect of their outstanding debtors as on 31.03.2012 discussed in details in the following pages.

The Honorable Union Finance Minister in his speech expressed his views that "Negative List approach for taxation of services is being introduced in the current fiscal. Under the new approach, all services except those in the 'Negative List' or otherwise exempted, would come into the tax net, which will come into effect from 1st July, 2012. The new comprehensive approach to taxation of services is a shining piece of tax reform, preparatory to the introduction of GST. In a nutshell, the comprehensive approach to taxation of services implies larger tax base with limited number of exemptions. On the Central Excise side the standard rate of excise duty has been increased from 10 to 12 per cent in the Finance Bill, 2012. These changes are likely to help the Department in garnering additional tax revenue"

Further on the GST Front he commented that "Apart from undertaking a pilot project for developing a common portal for GST with the Centre and 11 States, the Government has also approved a proposal to set up a Special Purpose Vehicle (SPV) for GST called GSTN to implement and maintain the IT infrastructure required for a smooth roll-out of GST."

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 May, 2012 (assessees other than individuals, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th June 2012
	E-Payment	6th June 2012

Amended Sections of Finance Act, 2012

The Finance Bill, 2012 was passed in the Lok Sabha on 07.05.2012 but it was different from the Finance Bill as proposed in Budget, 2012-13 on 16th March, 2012. The changes taken place in the definition and negative list are given hereunder in changed form :

Changes in the definition u/s 65B

Under Section 65B the following five definitions have been modified:-

1. "**business entity**" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession
2. "**interest**" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized
3. "**money**" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value
4. "**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
      (ia) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the constitution; 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 1A.– For the purposes of this Clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged

   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;
5. "**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 moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

Changes in Negative List Services

Under negative list the following three services have been modified:-

1. Services relating to agriculture or agricultural produce by way of –
   (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
   (ii) supply of farm labour;
   (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
   (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
   (v) loading, unloading, packing, storage or warehousing of agricultural produce;
   (vi) agricultural extension services;
   (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
2. Service of transportation of passengers, with or without accompanied belongings, by –
   (i) a stage carriage;
   (ii) railways in a class other than –
      (a) first class; or
      (b) an air conditioned coach;
   (iii) metro, monorail or tramway;
   (iv) inland waterways;
   (v) public transport in a vessel between places located in India, other than predominantly for tourism purpose; and
   (vi) metered cabs, radio taxis or auto rickshaws;

3. Services by way of transportation of goods –
   (i) by road except the services of –
      (a) a goods transportation agency; or
      (b) a courier agency;
   (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
   (iii) by inland waterways;

Definitions in Service Tax

Definitions - Mega Exemption Notification

As per Notification No.12/2012, Government exempts certain taxable services from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 and for the purpose of this notification, certain definitions are provided, which are as follows:

1. "**advocate**" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961),
2. "**appropriate duty**" means duty payable on manufacture or production under a Central or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt,
3. "**arbitral tribunal**" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996),
4. **"authorised medical practitioner"** means any medical practitioner registered with any of the Councils of the recognised system of medicine and includes medical professional having the requisite qualification to practice in any recognised system of medicine as per any law for the time being in force,
5. **"authorised person"** means and includes any person whether being an individual, partnership firm, limited liability partnership or body corporate, who is appointed as such either by a stock broker including trading member or by a member of commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange, as an agent of the stock broker or member of a commodity exchange,
6. **"banking company"** has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act,1934(2 of 1934),

7. **"business facilitator or business correspondent"** means an intermediary appointed under business facilitator model or business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India,
8. **"clinical establishment"** means a hospital, nursing home, clinic, sanatorium or an institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine, established and administered or maintained by any person or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases,

9. **"charitable activities"** means activities relating to -

   (a) public health by way of -

   (I) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

   (II) public awareness of preventive health, family planning or prevention of HIV infection;

   (b) advancement of religion;

   (c) advancement of educational programmes or skill development relating to,-

   (I) abandoned, orphaned or homeless children;

   (II) physically or mentally abused and traumatized persons;

   (III) prisoners; or

   (IV) persons over the age of 65 years residing in a rural area;

   (d) preservation of environment including watershed, forests and wildlife; or

   (e) advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year.

   Explanation: - For the purpose of this clause, 'general public' means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

10. **"commodity exchange"** means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act,1952 (74 of 1952),
11. **"contract carriage"** has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
12. **"declared tariff"** includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but does not include any discount offered on the published charges for such unit,
13. **"distributor or selling agent"** has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April,

2010 and shall include distributor or selling agent authorised by the lottery organising State,

14. **"general insurance business"** has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972),

15. **"goods carriage"** has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),

16. **"health care services"** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine and includes services by way of supply of meals for the patient or transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma,

17. **"incubatee"** means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products,

18. **"insurance company"** means a company carrying on life insurance business or general insurance business,

19. **"life insurance business"** has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938),

20. **"original works"** means -

    (a) all new constructions; or

    (b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable,

21. **"principal manufacturer"** means any person who gets goods manufactured or processed on his account from another person,

22. "**recognized sports body"** means (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic Association or (vi) a federation or a body which regulates a sport at international level,

23. **"religious place"** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion,

24. "**residential complex**" means any complex comprising of a building or buildings, having more than one single residential unit,

25. **"rural area"** means the area comprised in a village as defined in land revenue records, excluding,-

    (i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

    (ii) any area that may be notified as an urban area by the Central Government or a State Government,

26. **"single residential unit"** means an independent residential unit with specific facilities for living, cooking and sanitary requirements,

27. **"specified international organisation"** means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply,

28. **"state transport undertaking"** has the meaning assigned to it in clause (42) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988),

29. **"sub-broker"** has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) (Second Amendment) Regulations, 2006,

30. **"trade union"** has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act,1926(16 of 1926).

Circular on Point of Taxtion effecting 8 type of service providers including CA, CS, CWA....

CBEC issued circular clarifying that Individual, Proprietor or Partnership assesses providing CA, CS, CWA and other services specified in the previous Rule 7(c) of Point of Taxation Rules, 2011 shall have to pay service tax at enhanced rate of 12.36% even on the invoices raised before 31st March 2012 which is due as on 1st April 2012. While for other services the rate of tax for invoices issued prior to 31st March 2012 continue to be 10.3%.

Position before 01.04.2011

Service tax was to be paid on the basis of payments received towards the value of taxable services provided as laid down in the Service Tax Rules.

Position after 01.04.2011

The Point Of Taxation Rules, 2011 introduced the concept of "Point of taxation" i.e. the date on which service shall be deemed to be provided. Also the Service Tax Rules were amended to provide that tax shall be paid when services shall be deemed to be provided as per the rules made in this regard. These rules became mandatory from 01.07.2011.

Rule 7(c) of Point of Taxation Rules states that,

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

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (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:

Hence, for the above services the point of taxation, i.e. date on which service shall be deemed to be provided or the date on which service tax became payable continued to be the date on which payment was received.

Position after 01.04.2012

The rate of service tax was enhanced to 12.36% w.e.f. 1st April 2012. Further Notification No. 04/2012-Service Tax dated 17th March 2012, introduced a new Rule 7 in place of the earlier Rule 7, whereby the eight specified services were given status quo with the other services.

Further Notification No. 3/2012-Service Tax amended Service Tax Rule 6(1) to the effect that all service providers can avail the option to pay service tax on receipt basis subject to the condition that the taxable turnover in the preceding financial year was less than or equal to fifty lakhs rupees and the option to pay tax on receipt basis can be availed only up to a limit of fifty lakhs rupees received in the current fiscal.

Hence, in respect of the assesses rendering the Eight Specified services who cannot avail the above benefit (receipt basis of taxation) due to the restrictions imposed, the Point of Taxation changed from the date on which payment was received to the date on which service was deemed to be provided i.e. the date on which invoice (provided the invoice is issued within 30 days of rendering of service, else, date on which service is rendered) was issued or advance received.

For the above assesses there was a dilemma regarding Point of Taxation of invoices issued on or before 31st March, 2012 where the payment was due as on 1st April 2012.CBEC in its circular No. 154/5/2012-ST (Text of Circular provided in the May,2012 edition of Tax Talk) clarified that the point of taxation shall continue to be determined as per old rule 7 of Point of Taxation Rules, i.e. Date on which payment is received.

Rule 5B of Service Tax Rules provides that the rate of tax applicable shall be the rate when services are deemed to be provided. Hence for the above assesses the rate applicable in respect of the invoices raised before 31.03.2011 and due as on 1st April would be 12.36%.

Representations were made to the department and CBEC yet again came out with another Circular confirming the above interpretation vide Circular No. 158/9/2012-ST.

Text of the Circular - Clarification on Rate of Tax

1. *The rate of service tax has been restored to 12% w.e.f. 1st April 2012. Representations have been received requesting clarification on the rate of tax applicable wherein invoices were raised before 1st April 2012 and the payments shall be after 1st April 2012. Clarification has been requested in case of the 8 specified services provided by individuals or proprietary firms or partnership firms, to which Rule 7 of Point of Taxation Rules 2011 was applicable and services on which tax is paid under reverse charge.*

2. *The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. Circular No 154/5/2012-ST dated 28th March 2012 has also clarified the same. Thus in case of such 8 specified services provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by the service receiver, if the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @12%.*

3. *The invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004.*

Circular No. 158/9/2012 - ST, Dated 8th May, 2012

Service Tax (Settlement of Cases) Rules, 2012

The Finance Bill 2012 had proposed to open the gate of Settlement Commission for Service Tax cases. Now, after enactment of the bill, the Government had notified new set of rules to be known as Service Tax (Settlement of Cases) Rules, 2012 vide Notification 16/2012-ST, dated 29th May, 2012. The provisions have been introduced to help in resolving disputes with greater ease. This should encourage quick settlement of disputes and save the businessman from worries of prosecution in certain situations".

The provisions of the rules are discussed hereunder:-

1. Statutory Provisions: Settlement of cases shall be governed by relevant statutory provisions in Central Excise Act, 1944, i.e., Section 31, 32 and 32 A to 32 P and also by Service Tax (Settlement of Cases) Rules 2012 which is announced on the lines of Central Excise (Settlement of Cases) Rules 2007.

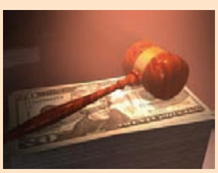
2. Settlement Commission: The concept of Settlement Commission is based on Wanchoo Committee Report. The objectives of Settlement Commission is to provide quick and easy settlement of indirect tax disputes of high revenue stake so that time and energy of both litigants and the Department shall be saved. Settlement Commission serves the following benefits:-

- Quick settlement of disputes to avoid prolonged litigation
- A onetime tax evader or an un-intending defaulter can make clean his affairs through Settlement.
- Any defaulting person can admit his guilt, pay taxes with applicable interest and avoid further liabilities.
- Settlement Commission can grant waiver/ reduction of penalty, fine or interest
- Settlement Commission can grant immunity from prosecution to assessee, its directors and partners.

3. Service Tax (Settlement of Cases) Rules 2012 prescribes form and manner of application, disclosure of information in the application for Settlement of Cases, manner of provisional attachment of property and fees for copies of report etc.

4. *Following points are worth noting in relation to settlement of cases:-*

Form and manner of Application.



- Any assessee can approach the Settlement Commission.
- The proceedings / cases should be pending with aggregate amount of more than Rs. 3 lakh involved.
- The application has to be made in Form SC(ST)-1, all the accompanying relevant documents should be signed.
- Application to Settlement Commission should be made in Quintuplicate with a fee of Rs. 1000/-.
- Application once made, cannot be withdrawn.
- One of the pre-condition for application to Settlement Commission is that the proceedings or case must be pending before the adjudicating authority on the date of application. A show cause notice should have been issued.
- The additional amount of service tax accepted by the applicant along with interest due thereon shall be deposited, before filing the application.
- Application must make full and true disclosures before the Settlement Commission which is the very basis of settlement.
- Issues relating to recovery of Cenvat credit can also be taken up before the Settlement Commission.

Disclosure of information in the application for settlement of cases. - The Settlement Commission shall, while calling for a report from the Commissioner of Central Excise having jurisdiction or Commissioner of Service Tax having jurisdiction, under sub-section (3) of section 32F of Excise Act, made applicable to service tax vide section 83 of the Act, forward a copy of the application referred to in sub-rule (1) of rule 3 along with the annexure to the application and the statements and other documents accompanying such annexure.

Manner of provisional attachment of property. –

(1) Where the Settlement Commission orders attachment of property under sub-section (1) of section 32G of Excise Act, made applicable to service tax vide section 83 of the Act, it shall send a copy of such order to the Commissioner of Central Excise or Commissioner of Service Tax having jurisdiction over the place in which the applicant owns any movable or immovable property or resides or carries on his business or has his bank account.

(2) On receipt of the order referred to in sub-rule (1), the Commissioner may authorise any officer subordinate to him and not below the rank of an Assistant Commissioner of Central Excise or Service Tax to take steps to attach such property of the applicant.

(3) The officer authorised under sub-rule (2) shall prepare an inventory of the property attached and specify in it, in the case of the immovable property, the description of such property sufficient to identify it and in case of the movable property, the place where such property is lodged or kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached.

(4) The officer authorised under sub-rule (2) shall send a copy of the inventory so prepared each to the Commissioner of Central Excise and the Settlement Commission.

Fee for copies of reports. The copy of the report shall be available to any person on payment of fee of five rupees per page of each report or part thereof.

Notification No. 16/2012-St, Dated 29.05.2012

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

Service Tax (Compounding of Offences) Rules, 2012

The Finance Bill 2012 had proposed to open the gate of Compounding of Offences for Service Tax cases. Now, after enactment of the bill, the Government had notified new set of rules to be known as Service Tax (Compounding of Offences) Rules, 2012 vide Notification 17/2012-ST, dated 29th May, 2012. "**Compounding** is a process whereby an accused pays compounding charges in lieu of undergoing consequences. It allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges".

The provisions of the rules are discussed hereunder:-

1. Form and manner of Application (Rule 3): An applicant may, either before or after institution of prosecution, make an application to compounding authority to compound the offence.

Explanation – Where an offence under the Act has been committed at more than one place Chief Commissioner of Central Excise having jurisdiction over such place, where the amount of service tax evaded is more than the others, shall be the competent authority.

The following details are required to be furnished in application form:-

- Details of adjudication order in relation to the case for compounding;
- Brief facts of the case and particulars of the offence(s) charged;
- In case the show cause notice was issued, if yes, Details of service tax demanded;
- Whether the show cause notice has been adjudicated, if yes, adjudication details;
- Amount of service tax confirmed;
- Amount of CENVAT credit to be recovered/ denied;
- Penalty imposed;
- Whether this is the first offence under this Act;
- Whether any proceedings for the same offences contemplated under any other law, if so, then such details.

2. Procedure on receipt of application (Rule 4): On receipt of an application under Rule 3, the compounding authority shall:-

a) Call for a report from the reporting authority with reference to the particulars furnished in the application, or any other information, which may be considered relevant for examination of such application.

b) Such report shall be submitted by the reporting authority within a period of one month or within such extended period as may be allowed.

c) The Compounding Authority, after taking into account the application and the report of the reporting authority, may, by order, either allow the application indicating the compounding amount payable and grant him immunity from prosecution or reject such application providing a reasonable opportunity of being heard to the applicant and also mentioning the ground for such rejection. The application shall not be allowed unless the applicant has paid the service tax, penalty and interest liable for the case for which application has been made.

d) The applicant shall, within a period of 30 days from the date of receipt of order allowing the compounding offences, pay the compounding amount.

3. Fixation of the Compounding amount (Rule 5): The compounding amount shall be as detailed below:-

Sl. No.	Offence	Compounding Amount
1.	Offence specified under section 89 (1)(a) of the Act [knowingly evades the payment of Service Tax under this chapter]	Up to 50% of the amount of service tax evasion, subject to minimum of 10% of amount of tax evaded.
2.	Offence specified under section 89 (1)(b) of the Act [avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter]	Up to 50% of the amount of CENVAT Credit wrongly taken or utilized, subject to minimum of 10% of said amount.
3.	Offence specified under section 89 (1)(c) of the Act [maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information]	Rs. 50,000/- for the first offence and to be increased by 100% of this amount for each subsequent offence.
4.	Offence specified under section 89 (1)(d) of the Act [collects any amount of service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due]	Up to 25% of the amount of service tax not deposited subject to a minimum of 2% for each month for which the amount has not been so deposited.

Provided if a person has committed offences falling under more than one category, the compounding amount, in such cases, shall be the amount for which a higher compounding amount has been prescribed.

4. Power of Compounding authority to grant immunity from prosecution (Rule 6): The compounding authority, if he is satisfied that any person who has made the application for compounding of offence under these rules has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, grant such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Act.

5. Withdrawal of Immunity from prosecution in certain conditions: Immunity granted to a person may be withdrawn if such person fails to pay any sum specified in the order of compounding or fails to comply with any condition subject to which immunity was granted. An immunity granted to a person may, at any time, be withdrawn by the Compounding Authority, if he is satisfied that such person had, in course of the compounding proceedings, concealed any material particulars, or had given false evidence, and there upon the person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings etc.

Notification No. 17/2012-St, Dated 29.05.2012

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

Frequently Asked Question

Q. Whether the benefit of exemption Notification No. 6/2005 dated 01.03.2005, popularly known as the SSP exemption (₹ 10 Lakh) can be availed independently by two partnership firms having the same set of partners for providing taxable services?

Does the answer remain same in case of Proprietorship Firms with same Proprietor?

A. Partnership Firms having same set of partners are separate legal entities independent of each other in the eyes of law. The benefit of exemption Notification No. 6/2005 dated 01.03.2005 is assesses specific and hence the Exemption of service tax can be availed by both firms irrespective of members.

However, in case of two or more proprietorship firms having same proprietor, the limit shall apply to the aggregate value of all such taxable services of all such proprietorship firms. This is because proprietorship firms of the same proprietor are not independent entities in the eyes of law, i.e. they do not enjoy independent status.

Moreover, we would also like to discuss that earlier the exemption of small service providers was on the receipt basis i.e. gross amount received up to ₹ 10 lakh towards taxable service was exempt. Notification No. 5/2012-ST amended the above notification to provide that the exemption would now be available on first ₹ 10 lakh invoice raised towards taxable services w.e.f. 1st April, 2012.Hence, the practical difficulties which assesses used to face in availing the exemption have now been resolved.

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