Tax Talk

The Monthly Service Tax Bulletin

Issue No. 10/2012-13 January 2013

Editorial

The expectations of the tax payers of the nation to be awarded with a favorable clarification to reverse the cynical mood in the business environment of the country, received a setback on the dawn of the 1st day of 2013 in the form of the draconian Circular No. 967/01/2013-CX. The Circular issued by Hon'ble CBEC, has crossed the boundaries of all imagination, when it rescinded the seven previous circulars and issued its first said Circular of the New Year, for recovery of dues, even, during pendency of Stay Applications, at its appropriate stage. While the said Circular is being condemned by the tax payers and sundry, the four Hon'ble High Courts, blessing a respite have already granted stay of operation of the said Circular in different cases. Although it is felt that the said Circular as issued, covers only the Central Excise assessees, it is apprehended, based on past precedent, that, the service tax assessees who are currently spared, might soon be brought under the cover of the said Circular or a similar Circular.

The chilling winter is already seeing its end, but there is no end to the eagerness to see how the amended ST-3 return form will look. The ray of hope is still alive in the eyes of the assessees amidst the utter confusion regarding the due date to file the return and the details that would be required, in the return form to come, for the period July 2012 onwards.

Earlier in this month, in a statement to the media, the Ld. Revenue Secretary, Shree Sumit Bose voiced that, *"all services are taxable with effect from 1.7.2012, except those in the Negative List and exempted services. However, a number of service providers who should be paying service tax now have not yet registered themselves. It is also noticed that more than half of the service providers who are registered with us are not filing returns. The Department has also gathered information that a number of service providers are collecting service tax from the receivers of service but not depositing the tax with the Government. Let me warn them that all such service providers will not only be liable to pay the service tax along with interest and penalty which may be equal to the service tax evaded, but they can also be prosecuted for these offences. Money due to them from a third party can also be appropriated by the Government".*

Bearing so much of the thorny amendment/announcement, some good news regarding implementation of GST is going around. After great hurdle of conflict between the Centre and the State, finally a compensation package has been agreed. Although the Chairman of the Empowered Committee of State Finance Ministers and Hon'ble Deputy Chief Minister, Bihar, Sri Sushil Modi said in his statement, that, "GST implementation from the coming financial year seems difficult, as the government is yet to fulfill certain statutory prerequisites", yet we should have our hopes alive, because the Hon'ble Finance Minister, Sri P. Chidambaram had recently said if states arrive at a consensus, he would give an outline for GST in the Budget.

Also during this month, the Hon'ble CBEC has blessed the assessees with two clarifications and those are;

i) service tax would not be levied at the time of reminder notices/letters of renewal premiums issued to the policy holders, considering these are not invoices.

ii) service tax would not be levied on transportation of milk by rail or a vessel considering it being an item of foodstuff.

We by this newsletter aim to benefit all section of professionals and business entities. To further facilitate the process we are posting FAQs in all our issues. In order to help us serve you better we request you to forward your queries to the email-id 'office@goyalstax.com'. We endeavour to solve your queries in the subsequent issues.

If any of your friends and well wishers want to receive this newsletter, please feel free to contact us at servicetaxgoyal@gmail.com.

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DUE DATES

CASE	Form	Due Date
Payment* of Month ending 31st January 2013 (assessee other than individual, proprietor-ship firm, partnership firm and LLP)	Cash/Cheque	5th Feb 2013
	E-Payment	6th Jan 2013
Revised return for the quarter April' 2012 - June' 2012 (Due date of filing of original return was 25th November, 2012)	ST-3	90 days of filing of original return

* Please use the Old Accounting codes while making payment

Education

Education services were kept outside the Service Tax net under the positive list approach except the "Commercial Training or Coaching" services. Even after introduction of Negative List concept with effect from 01.07.2012, these are enjoying the tax benefits and largely kept outside the purview of service tax by inclusion in the Negative List or in Mega Exemption list.

We found many issues coming up regarding the taxability of the services relating to education; therefore for the sake of common understanding of the intricate provisions, we are discussing the taxability of education services.

Out of Tax Items

i) *Pre-school education and education up to higher secondary school or equivalent.*

A question has been raised as to whether services provided by international schools giving certifications like IB, etc., will get covered by the above provision. It is clarified that these services are covered and hence not chargeable to service tax. [item (l)(i) of Negative List]

ii) *Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.*

The conduct of degree courses by colleges, universities institutions which lead to grant of qualification recognized by law is covered. Services which are related to delivery of education as 'a part' of the curriculum for obtaining a qualification prescribed by law are also covered. Any training which does not lead to grant of a recognized qualification like tuition is not covered. [item (l)(ii) of Negative List]

iii) *Education as a part of an approved vocational education course.*

The approved vocational education course has been defined in Section 65B(11) as follows:

- A course run by an industrial training institute or an industrial training center affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961;
- 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, Ministry of Labour and Employment, Government of India;
- A course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India. [item (l)(iii) of Negative List]

iv) *Charitable activities by a charitable institution registered under section 12AA of the Income tax Act, 1961 which includes activities relating to advancement of educational programmes or skill development relating to:*

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area.

v) *Auxiliary educational services provided to or by an educational institution in respect of education. Here auxiliary educational services means:*

- *any services relating to imparting any skill, knowledge or education, or*
- *development of course content, or*
- *any other knowledge – enhancement activity, whether for the students or the faculty, or*
- *any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to:*
  - *admission to such institution*
  - *conduct of examination*
  - *catering for the students under any mid-day meals scheme sponsored by Government*
  - *transportation of students, faculty or staff of such institution.*

vi) *Services by way of renting of immovable property provided to or by an educational institution in respect of education.*

vii) *Services in respect of farmer education or training are out of service tax net being included in Negative List by way of agricultural extension services.*

Taxability in case of Boarding school

Boarding schools providing various services coupled with education service are classifiable under bundled service in case the charges for education and others are not separable. Following the principles laid down u/s 66F the taxability has to be determined on the basis of the dominating service form i.e. the educational service.

Even other dominant service form being providing residential dwelling is also exempted and thus the entire bundled service is not taxable.

Taxability in case of dual qualification of a course

A course in college leading to dual qualification with separate curriculum and fees charged, would normally form two different services and therefore, assessed separately. However, if those two separate courses are clubbed together to create an artificial bundled service, the taxability would be determined on the basis of that particular qualification which attract the highest liability of service tax u/s 66F. However, incidental auxiliary course provided by way of hobby classes or extra-curricular activities along with education will form a natural bundled course.

Taxability of placement or recruitment services provided by educational institutions

Placement services provided by educational institutions and colleges to students for securing job placements or services to prospective employers like MNCs for recruiting candidates through campus interviews are taxable service.

Services provided by private tutors

Private tuition is not covered in the Negative List or Exemption list. However, private tutors can avail the benefit of threshold exemption.

Works Contract - Tax Rate

A person providing works contract service earlier had the option to pay service tax under the composite scheme at a lower rate of 2% of the gross amount charged for the works contract as service tax. However, the rate of 2% was revised to 4% w.e.f. 01.03.2008.

CBEC issued Instruction dated 28.04.2008 for clarification on the applicable rate of tax, where payment is received on or after 01.03.2008. The instruction indicated that the applicable rate would be the rate prevailing on the date, the services were deemed to be provided and not the actual date of provision of service.

At that time, according to Finance Act, 1994 service tax was chargeable on receipt of payment and on the amount received for the service provided or agreed to be provided, whether or not the service has been performed.

The applicable rate of service tax shall be the rate in force at the time the service became chargeable. Thus, the CBEC clarified that the rate of 4% is applicable for works contract where the payment is received on or after 01.03.2008 even though the work was performed earlier.

In this context the Delhi High Court passed a judgment that under service tax law, taxable event is the rendition of service and accordingly, rate of service tax shall be applicable, as in force on the date of rendition of service and not as in force on the date of receipt of payment. The High Court declaring the TRU Instruction as invalid which was pronounced that the rate of service tax on works contract service shall be 4% and not 2% for services rendered prior to 01.03.2008 but for which payment was received on or after 01.03.2008 when the rate was enhanced.

The High Court also declared that the said instruction is not in conformity with the law, which states that the taxable event under service tax is the rendition of service and not the date when the payment is received.

The quashing of this instruction has definitely provided relief to a number of taxpayers who have been facing litigation in this respect.

Attention if Registered/Amended ST-2 after 1.07.2012

With the introduction of Negative List Concept and the application of reverse charge mechanism on certain specified services, those assessees who took registration for their newly born service tax liability and got the registration certificate under the category of "All Taxable Services (Other than in the negative list)" from 01.07.2012 onwards, now requires to amend their registration.

Please recall that subsequently the old accounting codes were restored for the purpose of payment, registration and filing of returns vide Circular No. 165/16/2012-ST dated 20th November 2012.

Now as per the instruction received from the Department, the assessees who got themselves registered or amended, on and after 01.07.2012 and received registration certificate under the category of "All Taxable Services (Other than in the negative list)", are required to amend their registration to add/delete the specific service provided/received by them from the list of presently available 119 services or the 120th added "Other Taxable Services", as applicable.

It is mandatorily required to amend the registration in order to be allowed to file Service Tax Returns for the period July'12 onwards, as per the Department instruction.

Recent Circulars

Invoices excludes Life Insurance notices/reminder

The Department clarified that the reminder notices or reminder letters issued by the life insurance companies issued to their policy holders to pay renewal premiums are not construed as invoices under the Point of Taxation Rules 2011. Since service results in issuance of an invoice, the reminder notices or reminder letters are not invoices, thus issuance of the same by life insurance companies do not result in tax liability. This clarification issued by the Department is valid only for life insurance sector.

[Circular No. 166/1/2013-ST dated 1st Jan' 2013]

Transportation of milk by rail/vessel is not taxable

The Department clarified that the transportation of milk by rail/vessel is outside tax net. Serial number 20(i) of Notification 25/2012-ST dated 20-06-2012 enumerates transportation of "foodstuff" by rail/vessel as exempted service. The expression "foodstuff" includes milk. Thus, service by way of transportation of milk by rail/vessel from one place in India to another is covered by the above serial number of the Notification 25/2012-ST and is thus exempted.

[Circular No. 167/2/2013-ST dated 1st Jan' 2013]

Frequently Asked Question

Q. Whether the Limited Liability Partnership (LLP) should be considered as a body corporate or a partnership firm for the applicability of service tax under reverse charge?

A. In partial/joint reverse charge, if the service is provided by an individual, HUF, proprietory firm or partnership firm, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory, reverse charge would come into play for few services.

The reply to this query wholly depends on the issue that whether LLP should be considered as a partnership firm or a body corporate, in service tax. We would like to refer Rules which define the words 'body corporate' and 'partnership firm' in Service Tax.

Rule 2(1)(bc) of Service Tax Rules, 1994 inserted w.e.f. 01.07.2012 defines body corporate as follows:

"body corporate" has the meaning assigned to it in section 2(7) of the Companies Act, 1956.

As per the Section 2(7) of the Companies Act, 1956, we find that body corporate has been defined as follows:

"body corporate" or "corporation" includes a company incorporated outside India but does not include –

a) a corporation sole;

b) a co-operative society registered under any law relating to co-operative societies; and

c) any other body corporate (not being a company as defined in this Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Rule 2(1) (cd) of Service Tax Rules, 1994 inserted w.e.f. 01.04.2012 defines partnership firm as follows:

"**partnership firm** includes a limited liability partnership".

Going through the above definitions, we can understand that LLP is included in the definition of a body Corporate but it is also included in the definition of a partnership firm as provided by the Service Tax Rules. This has created confusion with regard to service tax implications. However, we need to take a harmonious interpretation of the definitions provided above, since there is a specific insertion in the Rule which states that partnership firm includes LLP. Hence, we understand that LLP should be considered as a partnership firm for the purpose of service tax.

Q. How to calculate interest in case of delay payment of service tax?

A. The interest liability was amplified to 18% as from the earlier rate of 13% per annum w.e.f. 01.04.2011. This is one of the highest increases in the rates of interest. The interest rates had been increased after a long period, but the sudden increase of 5% is proving to be killing in service tax.

Some relief is provided in the Finance Act 1994 by way of inserting a proviso to section 73B. The detailed proviso reads as follows:

"Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three percent per annum."

Therefore, the reduced interest rate of 15% (18%-3%) will be applicable in all cases where the value of taxable services provided in the preceding financial year is upto Rs. 60 lakh.

While calculating interest one thing that is required to be kept in mind is that if the delay in payment of service tax relates to period prior to 01.04.2011 then interest is to be calculated @ 13% p.a. for the period upto 31.03.2011 and 15% or 18% as the case may be for the period from 01.04.2011 to date of payment.

Moreover, the interest is to be calculated for number of days delay, unlike in some other taxes where interest is to be calculated on per month basis. Moreover the interest is payable upto the date of making deposit of challan in the bank on payment by cash or cheque. We like to elaborate the provision by way of illustration.

Illustration:

Service tax liability for the period ending June 2011 is Rs.10,000/-. Cheque deposited on 17th September 2011 and realised by Bank on 20th September 2011.

Solution:

Here, we assume that the service provider is a person having taxable turnover less than Rs. 60 lakhs in the preceding financial year. Hence, Service Tax rate applicable shall be 15% p.a. and the due date for depositing the amount of service tax for the month/quarter is 5th July. Therefore, the service provider would have to pay interest for the period of 6th July to 17th September, i.e. 74 days on Rs.10,000/- interest amounting to Rs.304/- (10,000*15%*74/365).

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