Tax Talk

The Monthly Service Tax Bulletin

Issue No. 11/2012-13

February 2013

Editorial

This year's overall budget has been considered as a flat budget. On service tax front, biggest and widely applauded change is introduction of *Service Tax Voluntary Compliance Encouragement Scheme, 2013*. Apart from this, not much has been done except some modifications in Negative List and Mega Exemption. Two items have been included in the Negative List, whereas exemption on the number of goods transported by Goods transport agency has been provided. At the same time entries from Mega Exemption Notification has been omitted to include those entries into the service tax net. Also, residential flats having a carpet area of more than 2000 square feet or cases where consideration for flats exceed Rupees One Crore, the abatement has been reduced from 75% to 70% as it was felt that in such cases the service component is more. This abatement has also been reduced for all type of commercial properties. Apart from the above, it is proposed to impose penalty on directors and office holders at the time when the offence was committed upto one lakh.

The Finance Minister quoted figure in his budget speech for Indirect tax collection to go up by Rs. 4700 crores in the fiscal year 2013-14. We presume that this figure has been calculated without taking into account collection which they are going to get due to announcement of Amnesty scheme in Service Tax covering period of 5 years 3 months i.e., 1st October. 2007 to 31st December, 2013). A rough estimation by learned service tax professionals suggest that the collection on this account may go upto Rs. 25,000 crores.

DUE DATES		
RETURNS	**Form**	**Due Date**
Return for the quarter July' 2012 - September' 2012	ST-3	25th March 2013
PAYMENTS	**Form**	**Due Date**
Payment* of month ending February 2013 (assessee other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th March 2013
	E-Payment	6th March 2013
Payment* of month/quarter ending March 2013 (All Assesses)	Cash/Cheque/ E-payment	31st March 2013

* Please use the Old Accounting codes while making payment

As a Co-Chairman of Indirect Tax Committee of MCC Chamber of Commerce & Industry, it gives me a sense of achievement that almost half of the of suggestions put up by MCC in front of the Revenue secretary/CBEC Chairperson/CBDT Chairperson and other officials as pre budget memorandum like amendment in section 77 of Finance Act 1994, Amnesty Scheme in Service Tax, Removal of Excise Duty on Garments, Valuation of Ayurvedic or like medicines, etc. have been accepted.

Another clarification expected to come up in this Union Budget was regarding issues arising out of the Place of Provision of Services Rules, 2012, since these Rules are very loosely worded. Sadly, the miserable condition of the assessee as existing after introduction of these Rules would still continue. Service Providers would have to gather and maintain detailed documentary and other evidence to prove their point of view. Any view would depend on a detailed scrutiny of the facts and circumstances governing each case. However, for the Revenue, there is no denying of the fact that these Rules would surely bring in a lot of additional revenue as scores of transactions which were exempt under the erstwhile Export of Services Rules would seem to be squarely covered under these Rules.

The desperation of checking out a new service tax return form for the period July' 2012 to September' 2012 and filing the same, finally got over with the declaration of the due date to file the return (via Notification No. 01/2013 dated 22.02.2013). The new return form is not a one page form, as expected by assessees, rather a multi-paged form requiring furnishing huge quantum of details. Also in the proforma of ST-3 form, the option for filing the form is available for the period 'April to September' and 'October to March', however, it is apprehended that the e-form to get uploaded on aces.gov.in, for filing purpose, shall cover the period 'July to September' only.

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 our email-id 'office@goyalstax.com'. We endeavour to solve your queries in the subsequent issues.

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

CA Sushil Kr Goyal

Changes in Services-Budget 2013

Abatement Reduced w.e.f. 1st March 2013

The abatement provided by Notification No.26/2012 dated 20.6.2012 is now modified in case of Construction Service by Notification No. 2/2013 dated 1.3.2013 and same is became effective from 1.3.2013 itself.

1. **Construction Service** : The entry Construction of complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by competent authority.

   In case of Residential unit - the abatement of 75% has been reduced to 70% in cases where either the carpet area is more than 2000 square feet or the amount charged for the unit is 1 Crore or more, and in case of Commercial unit - the abatement of 75% has been reduced to 70% in all cases. (Making effective taxable rate 3.708%)

Exemption withdrawn w.e.f. 1st April 2013

The exemptions provided by Notification No.25/2012 dated 20.6.2012 is now reduced/restricted by modification in case of following Service by Notification No. 3/2013 dated 1.3.2013 and same will become effective from 1.4.2013.

1. **Charitable Activities:** Definition of "charitable activities" amended to exclude the threshold exemption of Rs. 25 lakhs for charitable activities relating to advancement of "any other object of general public utility". (S.No.4.). Hence the above activity is now covered in tax net.
2. **Education Service:** Renting of immoveable property service and auxiliary educational services provided **by** educational institute are excluded from Negative list (S.No.9.) making it taxable.
3. **Copyright Service:** The exemption on temporary transfer or permitting the use or enjoyment of a copyright relating to cinematograph films is restricted to films exhibited in cinema halls / theater (S.No.15.) making other copyright services relating to cinematographic films taxable.
4. **Restaurant Service:** All restaurants having Air-condition/ Central air-heating facility in any part of the establishment at any time of the year even if they do not have license to serve liquor (S.No.19.) is now taxable.
5. **Transport by Rail or Vessel:** Transportation of Petroleum and petroleum products, postal mail or mail bags and household effects by rail or a vessel are excluded from list of exempt items (S. No.20) and are now taxable.
6. **Vehicle parking facility**: Parking facility provided to general public is omitted from Negative list (S.No.24) making it taxable.
7. **Repair or maintenance service**: Services provided in respect of an aircraft to Government, a local authority or a governmental authority is excluded from Negative list (S.No.25.) and is now taxable.

Exemption Provided w.e.f. 1st April 2013

The exemptions provided by Notification No.25/2012 dated 20.6.2012 is now expanded by modification in case of Transport Service provided by Goods transport Agency vide Notification No. 3/2013 dated 1.3.2013 and same will become effective from 1.4.2013.

1. **Transport by Road:** The exemptions have been expanded by modifying the entry at S.No.21. and after modification transportation of following items by Goods transport Agency shall be exempt:-

   1) agricultural produce;
   2) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
   3) chemical fertilizer and oilcakes;
   4) newspaper or magazines registered with the Registrar of Newspapers;
   5) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
   6) defence or military equipments;

Scope of Negative List Expanded (w.e.f. date of enactment)

The area/coverage of following items in Negative List proposed to be expanded by bringing changes in the Finance Act 1994 and same will become effective from enactment of the Finance Act 2013.

1. **Vocational Courses**: Scope of definition of 'Approved Vocational Education Course' amended to include courses in 'designated trades' offered by Industrial Training Institute or Industrial Training Center affiliated to State Council of Vocational Training to be covered by the negative list. In addition to this, clause (iii) of the former definition dealing with courses run by an institute affiliated to the National Skill Development Corporation (NSDC) is being deleted as it is not an affiliating body.
2. **Process as Job Work**: Definition of "process amounting to manufacture or production of goods" as provided in section 65B (40) amended to include processes on which duties of excise are leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
3. **Agriculture:** The negative list entry in sub-clause (i) of clause (d) of section 66D is being modified by deleting the word "seed". This will allow the benefit to all other testings in relation to "agriculture" or "agricultural produce".

Retrospective exemption

Retrospective exemption is being extended to the Indian Railways on the service tax leviable on various taxable services provided by them during the period prior to the 1st day of July 2012, to the extent show cause notices have been issued upto the 28th day of February 2013.

Other Changes-Budget 2013

1. **Advance Ruling extended to Resident Public Limited Company**

   The benefits of Advance Ruling Authority is extended to resident public limited companies also vide Notification No.4/2013 dated 1.3.2013 making it applicable from 1st March 2013 itself. Thus, public limited Companies can now obtain Advance Rulings and will help in reducing the litigations on service provided public limited Companies.

2. **Drafting error rectified**

   A new section 66BA is being proposed to be included in the Act according to which references to section 66 (charging section under the positive list approach) in Chapter V of the Act will be deemed to be a reference to section 66B (charging section under the negative list approach), with effect from the 1st day of July, 2012.

3. **Extended period not accepted, accept normal period**

   Show Cause Notice: If a show cause notice issued under proviso to sub-section (1) of section 73 (i.e. fraud, suppression cases), is not found sustainable by an appellate authority or tribunal or court, the same will be deemed to be a notice issued for a period of 18 months.

4. **Penalty for delay registration modify**

   Section 77, sub-section (1), clause (a) of the Finance Act, 1994 is proposed to be amended such that the maximum penalty imposable for failure to obtain registration will be restricted to ten thousand rupees only.

5. **Penalty on Director or Officer in default**

   Section 78A is being introduced, to make provision for imposition of penalty on director, manager, secretary or other officer of the company, who is in any manner knowingly concerned with specified contraventions. This will surely create difficulties in the years to come for the directors/ officers of the Company. The proposed section is as given below:

   "78A. Where a company has committed any of the following contraventions, namely:—

   (a) evasion of service tax; or

   (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

   (c) availment and utilisation of 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; or

   (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.";

6. **Appeal to Appellate Tribunal/CESTAT**

   Section 86 is being amended to provide that in case of appeal filed by assessee, CESTAT can admit an appeal or permit the filing of Memorandum of Cross Objections after the expiry of the relevant period by the Department.

7. **Imprisonment in Service Tax introduced**

   New provisions are being introduced to prescribe revised punishments for offences in Section 89 of the Act as summarized hereunder:

   i) in the case of certain offences as listed in clauses (a), (b) and (c) of section 89(1) is committed and the amount exceeds fifty lakh rupees, punishment shall be for a term which may extend to three years, but shall not, in any case, be less than six months;

   ii) in the case of failure to pay service tax collected, to the credit of the Central Government within six months, an offence specified clause (d) of section 89(1) and if such non-payment exceeds fifty lakh rupees, punishment shall be imprisonment for a term which may extend upto seven years but not less than six months;

   iii) in the case of any other offence, the punishment shall be imprisonment for a term which may extend to one year.

8. **Cognizable offence :**

   In light of the proposed introduction of the Section 89 in the Act, Section 90 is being introduced to specify and differentiate cognizable offences from non-cognizable and bailable offences.

9. **Power to Arrest**

   The proposed introduction of Section 91 in the Act has vested power with the Commissioner of Central Excise to authorize any officer of Central Excise not below the rank of Superintendent of Central Excise to arrest a person for specified offences particularly nonpayment of collected service tax. However the authorized officer has to inform the grounds of arrest to the aggrieved and produce him before the magistrate within 24 hours. Further the AC/DC have same powers to release an arrested person on bail or otherwise, in case of a non-cognizable and bailable offence and will be subjected to the same provisions as an officer in charge of a police station has and will be subjected to, under section 436 of the Code of Criminal Procedure, 1973.

10. **Compounding of offense**

    The coverage of Section 9A of the Central Excise Act, 1994 applicable in relation to Service Tax as it applies in relation to a duty of Excise as envisaged in Section 83 of the Act is proposed to be restricted to sub section 2 of the said section. According to this, any assessee accused of any offence to the Central Government may be compounded either before or after the institution of prosecution by the Chief Commissioner of Central Excise on payment of such compounding amount and in such manner of compounding as prescribed subject to certain exceptions.

***Note :** The above changes will become applicable from enactment of the finance bill 2013 except point no.1 which is become applicable from 1st March, 2013.*

FAQ - Amnesty Scheme

Q. What is the name of the scheme?

A. The name of the Scheme is "Service Tax Voluntary Compliance Encouragement Scheme 2013".

Q. What is the period covered under this scheme?

A. This scheme covers the period beginning from the 1st October 2007 to 31st December 2012.

Q. Who is eligible to apply under this scheme?

A. Any person is eligible to declare his tax dues in respect services for which no notice or an order of determination under Section 72 or Section 73 or Section 73A of the Chapter has been issued or made before 1st March 2013.

Q. I have received a notice for service tax audit/ letter for asking records on 20th February 2013. Will I be covered under this scheme?

A. No, if a declaration has been made by a person against whom-

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of —

(i) search of premises under section 82 of the Chapter; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

(iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder; or

(b) an audit has been initiated, and such an inquiry, investigation or audit is pending on 1st March 2013, then such a declaration is liable to be rejected.

Q. Before which authority is the declaration required to be filed?

A. The declaration can be made to the designated authority, who will be an Officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme.

Q. What is the last date of declaration?

A. The last date for declaration is on or before 31st December 2013.

Q. What is the due date for the payment of tax dues as laid under this scheme?

A. Minimum 50% of the Tax Dues should be paid on or before 31st December 2013 and balance tax Dues on or before 30th June 2014.

Q. What are the Consequences of non-payment of Tax Dues or part thereof as declared under this scheme?

A. The declarant should pay his dues on the due dates as prescribed above, failing which he shall be liable to pay the same tax dues on or before 31st December 2014, alongwith interest thereon from 1st July 2014 to 31st December 2014.

Q. What are the benefits granted under this scheme?

A. A declarant paying his dues under this scheme shall get immunity from penalty, interest and other proceedings.

Q. What is the format for the declaration to be made?

A. The declaration and other details regarding the scheme will be prescribed at the time of announcement/notification of detailed rules made for the purpose after enactment of the Finance Act, 2013.

BOOK POST

If undelivered, please return to :

Tax Talk
Stephen House
Room No. 64, 4th Floor
4, B.B.D. Bag (East) Kolkata - 700 001