Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Thank you very much for showering your blessings filled with appreciations and good wishes for the future, on the completion of 1st year of Tax Talk. On entering the 2nd year of our bulletin, we deeply express our gratitude and also commit that we will try to be more informative in our forthcoming issues, and will always try to fulfill the expectations of all our esteemed readers.

Hope the pressure of filing Service Tax Return for the period July - September 2012 has eased by now and all of you must have filed your Service Tax Return by this time. The downloading of the filed ST-3 is still not allowed on the ACES and is expected to take some more time. If you still have not filed the ST-3, then you can file the same with applicable late fees as shown in the table below.

CBEC has proposed due date for the Service Tax Return for the period October 2012 - March 2013 to be 31st August 2013 and the Form ST-3 is expected to be uploaded in the ACES around 31st July 2013 vide Order No.03/2013-ST dated 23.04.2013. We hope that this time everything will go smoothly and there will be no further extension of due date.

We all are amazed to see the rampant growth in service tax collection for the year 2012-13 of Kolkata – Zone, which basically consists of State of West Bengal, Sikkim, Andaman and Nicobar Islands. The growth rate is almost 72% based on the circulated statistics of the collection of around Rs.5500 crore in the year 2012-13 as compared to a mere collection of Rs.3200 crore in the year 2011-12. We feel that this growth result is due to the non-payment of service tax in past by few assessees who are now paying for last five years in one go.

Finally the passage of the bill effectively brought an end to the budgetary process that started with the budget speech of the Finance Minister on February 28, 2013. The Finance Bill got the approval of Lok Sabha and that too without any changes except exempting the Railway for the earlier period.

We all are worried with the enactment of the imprisonment provisions and power to arrest, which are part of the Bill and being enacted, it will have far reaching implications. We can just hope that there will be some fair moderation by way of Rules or some clarificatory instruction shall be issued after the President's assent to the Bill so as to bring solace to the harsh provisions. With the enactment, assesses will be awarded with the benefit of the Amnesty Scheme, which everybody is looking forward to.

The forms for filing the appeal before CESTAT have been amended vide Notification No. 05/2013-ST dated 10-04-2013 and the same will be applicable from 1st June, 2013.

The issue of taxability on Job Work is questionable in the minds of many assesses and so for your convenience the same has been discussed in detail in page 2 of this issue.

In a meeting, Mr. Sushil Modi, Chairman of the Empowered Committee, at Park Hotel, Kolkata, made understood to general public that the introduction of GST is on a definite path of being implemented. He mentioned that 80% of the work has already been done. Also the Finance Minister repeated that remarkable advancement in GST path is made. It will thus not be a matter of surprise if GST gets implemented in 2014.

We by this newsletter aim to benefit all section of professionals and business entities. If you wish us to cover certain issue, 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.

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	6th May 2013*
	E-Payment	6th May 2013
July'12 - Sept'12 Return (with a late fees of Rs 500/-)	ST-3	15th May 2013
July'12 - Sept'12 Return (with a late fees of Rs 1000/-)	ST-3	30th May 2013**

* 5th being Sunday **For delay beyond 30th May 2013 Rs.1000 + 100/day (Maximum Rs.20000/-)

Production or Process in relation to Manufacture

Job Work means processing or working on raw material or semi finished goods supplied to the job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation, which is essential for aforesaid process. The person who carries out such activity is termed as Job Worker.

It is common for a manufacturer to send his inputs/ semi finished goods to another unit for carrying out processes required for completion of his product. Such activity is termed as Job-work. The entire process may be carried out by a single job worker or may be spread over many job workers. Job work may involve complete manufacture of a product or merely part processing of goods. The process could be extensive or a minor one.

Types of Job Work processes

Typically, the job work processes could be of the following types:

a) Labour intensive job work [pure service contract] - Under this arrangement the job worker is responsible to apply only skill and labour to carry out the desired process on products supplied by the contractee. This kind of arrangement involves negligible or no amount of supply of goods by job-worker for carrying out the intended process.

b) Composite job work [works contract] – Under this arrangement the job worker is responsible to supply goods alongwith the labour and/or skills. The property in goods used by the job worker is ultimately transferred to the principal manufacturer during the execution of the contracted work.

Taxability on job work under new regime

Job Work activities which are labour intensive fall within the broad meaning of 'Service' and are liable to service tax, unless otherwise exempt. Further clause (h) of Section 66E of the Act (Declared Services) covers the service portion of a 'works contract' as one of the declared category of service.

At the same time, any process which amounts to manufacture or production of goods is covered under the negative list of services in clause (f) of Section 66D of the Act. Also selected job works are exempted from service tax by virtue of Notification No. 25/2012 dated 20-06-2012 [Mega Exemption Notification].

Negative List

Clause (f) of Section 66D of the Act reads as under-

'any process amounting to manufacture or production of goods'.

This term has been defined in Section 65B(40) of the Act as under-

"process amounting to manufacture or production of goods" means

a) a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 [or the Medicinal and Toilet preparations (Excise Duty) Act, 1955]* or

b) 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.

* [inserted by Finance Bill 2013]

In reference to job-work transactions, the key test to determine taxability under the current service tax provisions is whether or not the process carried out by the job-worker results in production or manufacture of goods. If the process results in manufacture or production, the job work transaction will not attract service tax implications by virtue of being covered under negative list. Else, the job work may entail service tax implications either as a pure service contract or as a works contract.

Meaning of the term 'manufacture' and 'production'

The definition of the term 'manufacture' is provided as per Section 2(f) of the Central Excise Act, 1944 for the purposes of interpretation of the term 'manufacture' used in the negative list entry towards processes amounting to manufacture under the Act.

Section 2(f): manufacture" includes any process,-

i. incidental or ancillary to the completion of a manufactured product;

ii. which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, (5 of 1986).

iii. which in relation to any goods specified in the Third schedule involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

and the word" manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

In common parlance, the term 'production' implies the processes and methods used to transform tangible inputs (raw materials, semi-finished goods, sub-assemblies) into goods. Resources are used in this process to create an output that is suitable for use or has exchange value.

Exemption by Notification No. 25/2012

Under the new law of service taxation, following exemptions have been provided for job work activities under the Mega Exemption Notification.

1. Exemption No. 30(a): Carrying out an intermediate production process as job work in relation to agriculture, printing or textile processing.

2. Exemption No. 30(b): Carrying out an intermediate production process as job work in relation to cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985.

3. Exemption No. 30(c): Carrying out an intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer.

   "Appropriate duty" means-

   a) Duty payable on manufacture or production under a Central Act or a State Act,

   b) But shall not include 'Nil' rate of duty or duty wholly exempt.

   "Principal manufacturer" means any person who gets goods manufactured or processed on his account from another person.

4. Exemption No. 30(d): processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year.

(The Finance Act, 1994 referred as "the Act")

Recent Changes

New Forms for CESTAT appeal

New forms for filing appeal in the CESTAT (S.T-5, S.T-6, and S.T-7) have been introduced. This will come into force on and from the 01.06.2013. However, the Central Board of Excise & Customs have further clarified that though the usage of these new forms shall commence from 01.06.2013 onwards, the appellant may continue to use the old forms for a period of 3 months from the date of coming into effect of new forms i.e till 31.08.2013. With effect from 01.09.2013 onwards, no appeal shall be filed in the old forms and the appellant shall be compulsorily required to file appeals in newly prescribed forms.

In addition to the above, it has also been decided by the board to introduce a 21 string alphanumeric number along with the date of the order against which appeal is to be filed. All the 140 existing Commissionerates have been assigned pre- figured series and serial numbers, to be filled in the orders passed by the Commissioner (Appeals) or Commissioner (Adjudication), as the case may be.

(Notification No. 05/2013-ST dated 10-04-2013 read with Circular No. 969/03/2013-CX dated 11-04-2013)

Exemption provided to FMS

The Central Government has exempted the taxable services provided or agreed to be provided against a scrip under the Focus Market Scheme (FMS) by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the Act. As the name suggests, the exemption shall be subject to the condition that the scrip is issued against exports to the countries notified by the Government of India. The Scrip shall be issued to an exporter by the Regional Authority.

The Main Objective of the scheme is to offset high freight cost and other externalities to select international markets with a view to enhance our export competitiveness in these countries.

For the above purpose, the term 'Scrip' and 'Regional Authority' shall have following meaning:

"Regional Authority" means the authority competent to grant a duty credit scrip under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

"Scrip" means Focus Market Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.14 of the Foreign Trade Policy.

(Notification No. 06/2013-ST dated 18-04-2013)

Exemption provided to FPS

The Central Government has exempted the taxable services provided or agreed to be provided against a scrip under the Focus Product Scheme (FPS) also by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the said Act. However, it differs from the 'Focus Market Scheme' based on the criteria for which exemption is allowed i.e., in case of FMS the exemption eligibility is determined predominantly after considering the country to which the export is made, whereas in the case of FPS the exemption eligibility mainly depends on the product which is being exported.

The main objective of this scheme is to promote export of such products, which have high employment intensity in rural and semi urban areas, so as to offset territorial inefficiencies, infrastructure and other associated costs involved in marketing of these products in the international market.

For the above purpose, the term 'Regional Authority' shall carry the same meaning as above, whereas the term 'Scrip' shall mean:

'Focus Product Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with paragraph 3.15 of the Foreign Trade Policy'.

(Notification No. 07/2013-ST dated 18.04.2013)

Export Promotion of Specified Agriculture Output

Exemption stream has been extended to the taxable services provided or agreed to be provided against a scrip under *Vishesh Krishi* and *Gram Udyog Yojna* by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the Act.

Thus, an effort has been made on the part of the Central Government to reduce the cost burden on the exporters of specified agricultural produce.

(Notification No. 08/2013-ST dated 18.04.2013)

Erection of pandal or shamiana- a transfer of rights or a Service?

Central Board of Excise & Customs has made an effort to simplify the doubt prevailing in the minds of most of the service tax payers that whether the activity of preparation of place for organising event or function by way of erection/laying of pandal and shamiana, is a transfer of right to use the goods or is subjected to service tax. It is however being clarified that services provided by way of erection of pandal or shamiana would attract the levy of service tax.

In arriving at its view, CBEC has referred to the case of BSNL Vs. UOI [2006] 3 STT 245, in which the Hon' Supreme Court held, inter alia, that to constitute the transaction for the transfer of the right to use the goods, for the period during which the transferee has such legal right, it has to be at the exclusion of the transferor. Moreover, having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

Thus it is clarified that the activity of providing pandal and shamiana along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the pandal or shamiana remains with the service provider even after the erection is complete and the specially made–up space for temporary use handed over to the customer.

(Circular 168/3/2013 – ST dated 15.04.2013)

Amendment in Finance Bill, 2013

The Finance Bill, 2013 has been passed by the Lok Sabha after the following amendments:-

Special Provision for taxable services provided by Indian Railways.

99. (1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July 2012, or in section 66B, no service tax shall be levied or collected in respect of taxable services provided by the Indian Railways during the period prior to the 1st day of October, 2012.

(2) No refund shall be made of service tax paid in respect of taxable services provided by the Indian railways during the said period prior to the 1st day of October, 2012.

The railways had collected service tax on tickets booked before 01.10.2012 for the journey undertaken on or after 01.10.2012. After realizing their mistake that they have wrongly collected tax on these transactions even though the amount was negligible considering each case separately, the railways issued a circular from their side around the same time announcing that service tax shall be refundable to the passengers from whom the service tax was mistakenly collected, directly by the government. However after the above provisions, it is clear that the service tax erroneously collected by the railways is non-refundable in totality.

Frequently Asked Question

Q. What measures should be taken on the assessees part who are not able to get an acknowledged copy of the return filed for the period July to Sept 2012 because of the absence of the availability of the link on the ACES website to print/save the filed return?

A. After the return gets duly submitted by the service tax assessee and the status is displayed as 'Filed', a link is supposed to be generated, with the help of which the assessee can have the access to the acknowledged copy of the return so filed. This link usually gets generated within 1 business day from the date of uploading the service tax return. But this link is not available till date for the return filed for the period July to Sept 2012, though the status has been confirmed as 'Filed' on the ACES in XML Status feature.

Hence, under such perplexing situation, the assessee can keep a print out of the XML status page displaying 'Filed' and further take a print out of the 'excel utility ST-3 form' until a clarification is received from the Department's end or any option to print the return so filed by the assessee is incorporated on the www.aces.gov.in by the CBEC.

Birthday Wishes

- "I congratulate you for a great initiative and wish you all the best for your future. Well done"
  CA Subodh Agarwal, President, ICAI
- "Success doesn't lie in the result but in the efforts. Heartiest Wishes for the Success of Tax Talk……"
  CA Ranjeet Agarwal, Chairman, EIRC, ICAI
- "We appreciate your hard work for bringing out a first hand and informative source of publication. Best wishes"
  CA Dilip Kumar Somani, Jorhat
- "Congrats for completing one year of this wonderful bulletin, it's a great achievement..."
  CA Arjit Chakraborty
- "Congratulations, your tax talk is really very useful for everyone"
  CA Manish Shah, Jharsuguda
- "Congratulations… keep it up… Always helpful in updation"
  CA Tulsi Ram Tibrewala

- "Best Compliments for your selfless, relentless and useful publication! Hope you will keep up the good work"
  CA Kaberi Bhuyan, Chairperson, Guwahati Branch, ICAI
- "The publication has really helped to abreast with the latest developments and changes. Best wishes on the completion of one year"
  CA Suru Venkateswarlu, Bhubaneshwar
- "Congratulations for a wonderful tax publication and thanks a lot for updating us on Service Tax"
  CA Manoj Agarwal
- "Congratulations and carry on with stronger zeal and vigour… A knowledge partner"
  CA Shanti Kumar Jain
- "Congratulations… I find it a complete bulletin on Service Tax"
  CA Sanjay Agarwal.
- "Great effort always result in good creation… Keep it up…"
  CA Sabita Agarwal.

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