Tax Talk

The Monthly Service Tax Bulletin

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Editorial

The Finance Act 2013, has been enacted on 10th May 2013, with the Presidential assent to the Finance Bill 2013, through which the service tax assessees will be benefitted with the implementation of the Voluntary Compliance Encouragement Scheme. The Rules in relation to this Amnesty scheme have been introduced and the forms for declaration, etc under this scheme have been issued vide Notification No. 10/2013 dated 13.05.2013. More detailed information in relation to the scheme is presented in page 3 of this issue.

It is prima facie understood that the Amnesty seeker is required to pay the taxes not paid earlier during the period October' 2007 to December' 2012. However, while making such payment there is no provision to utilize the CENVAT credit. Hence, there arises a question in everybody's mind on the availment and utilization of Cenvat Credit in relation to such period, if any.

With the constitution of the Finance Act 2013, harsh prosecution provisions have also been made applicable. Now the service tax assessees need to be attentive on the correct identification of their service tax liability and the appropriate compliance of the formalities as required under the law since the imprisonment period may extend to seven years. The offences and prosecution section has been covered in page 2 of this issue.

There is a good news for those service tax assessees, whose return filed for the period July to September, 2012 prior to their date of registration in Service Tax were earlier rejected. CBEC has accepted the Service Tax returns filed for the period July-September, 2012 as valid return, which were technically rejected by the system on the ground that the same were filed for the period prior to the registration. These returns have been reprocessed in ACES and the status of these returns are being shown in the system as 'filed'. Thus, assessees need not to file the returns again for the same period and they can view the status of their returns in ACES under 'View XML Status' option. However, if the returns were rejected for any other reasons, the assessees are required to take corrective action as per the reasons of rejection.

In November 2012, the Reserve Bank of India had extended the period for realization and repatriation to India from six months to twelve months from the date of export, of the amount representing the full value of goods or software exported. This relaxation was available up to March 31, 2013. The issue has been reviewed and it has been decided, in consultation with the Government of India, to bring down the above realization period from twelve months to nine months from the date of export, with immediate effect, valid till September 30, 2013.

The confusion about abatement of 75% or 70% for Residential Flat under construction has been settled by Notification No. 09/ 2013 dated 8th May, 2013. It is now clear that if a Residential Flat is having carpet area of 2000 square feet (or more) or Rs 1 crore (or more) will get an abatement of 70% and tax is payable on 30% of the value. This clarifies that even if one condition is satisfied, tax is payable on 30% of the value. However, the abatement of 70% is also applicable for all commercial property. The Notification has been covered in page 4 of this issue.

Under the circumstances for the period '1st March 2013 to 7th May 2013', in case of a residential unit, service tax can be paid on 25% of the value, even if only one condition i.e, carpet area upto 2000 square feet or the amount charged is less than Rs. 1 crore, gets satisfied. This is because, as per the understanding of the earlier notification, service tax was leviable on 30% of the value only if both conditions were satisfied.

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 wants to receive this newsletter, please feel free to contact us at servicetaxgoyal@ gmail.com.

Sushil Goyal

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DUE DATES

CASE	Form	Due Date
Payment for Month of May (assessees other than individuals, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th June 2013
	E-Payment	6th June 2013

Offences and Imprisonment

Apart from the various penalties leviable under Section 76, 77, 78 and 78A, the prosecution provisions with regard to the different offences committed have been provided in the Service Tax Law. Here is a summary of the amended prosecution provisions as applicable with effect from 10.05.2013.

Specified Offence(s) where imprisonment term may extend to 3 years

In case, any person commits any of the following offences, where the amount involved exceeds Rs. 50 lakh, the imprisonment term may extend to 3 years.

(a) knowingly evades the payment of service tax under the Act; or

(b) 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 the Act; or

(c) maintains false books of accounts or fails to supply any information which he is required to supply under the provisions of the Act 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.

Specified Offence where imprisonment term may extend to 7 years

In case, any person collects any amount as 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 and such amount exceeds Rs. 50 lakh, the imprisonment term may extend to 7 years.

Applicability of minimum imprisonment term of 6 months

In case where the above mentioned offence(s) is/are committed and no special and adequate reasons to the contrary have been recorded in the judgement of the court, the imprisonment shall not be for a term of less than 6 months.

Not a "special and adequate reason"

The following shall not constitute special and adequate reasons for the purpose of above :

- the fact that the accused has been convicted for the first time for an offence under the Act;
- the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;
- the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of the offence;
- the age of the accused.

Other offence(s) where imprisonment term may extend to 1 year

In case any other offence(s) is/are convicted other than those specified above, the imprisonment term may extend to 1 year.

Imprisonment term for the second and subsequent conviction of offence(s)

Where any person is convicted, for the second and for every subsequent time, of the following specified offence(s), the maximum imprisonment period has been specified as follows:

- for the offence(s) where imprisonment term may extend to 3 years or 1 year (as discussed above), the imprisonment term may extend to 3 years;
- for the offence where imprisonment term may extend to 7 years (as discussed above), the imprisonment term may extend to 7 years.

Approval for the prosecution

A person shall not be prosecuted for any offence discussed above without the previous sanction of the Chief Commissioner of Central Excise.

Cognizable and Non-Cognizable offence

A **cognizable offence** is a criminal offence in which the police is empowered to register an FIR, investigate, and arrest an accused without a court issued warrant.

A **non-cognizable offence** is an offence in which the police can neither register an FIR nor effect arrest without the express permission or directions from the Court.

- Conviction of the offence where the imprisonment term extends to 7 years shall be cognizable offence.
- All offences except the above offence shall be non-cognizable and bailable.

Power to Arrest

The Commissioner of Central Excise can authorize, by general or special order, any officer of Central Excise not below the rank of Superintendent of Central Excise, to arrest any person if he has reason to believe that such person has committed offence as specified in Clause (i) or (ii) of Section 89 of the Act.

All arrests shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

In case of cognizable offence, where a person is arrested for any cognizable offence, every officer authorized to arrest a person shall inform such person, grounds of arrest and produce him before a magistrate within twenty-four hours.

Power to release an arrested person

In the case of a non-cognizable and bailable offence, the Assistant Commissioner or the Deputy Commissioner, as the case may be, shall have the same powers and be subject to the same provisions as an officer in charge of a police station has, for the purpose of releasing an arrested person on bail or otherwise, and will be subject to under Section 436 of the Code of Criminal Procedure, 1973.

Compounding of Offences

The Service Tax (Compounding of offences) Rules, 2012 (introduced vide Notification No. 17/2012 dated 29.05.2012) provides for the compounding of offences. The compounding amount as prescribed has been tabulated below:

Sl.	Offence	Compounding amount
1.	Offence specified under section 89 (1) (a) of the Act	Upto fifty percent of the amount of service tax evasion, subject to minimum of ten percent of amount of tax evaded.
2.	Offence specified under section 89 (1)(b) of the Act	Upto fifty percent of the amount of CENVAT Credit wrongly taken or utilised, subject to minimum of ten percent of said amount.
3.	Offence specified under section 89 (1)(c) of the Act	Rupees fifty thousand for the first offence and to be increased by hundred percent of this amount for each subsequent offence.
4.	Offence specified under section 89 (1)(d) of the Act	Upto twenty five percent of the amount of service tax not deposited subject to a minimum of two percent for each month for which the amount has not been so deposited.

Provided that, if a person has committed offences falling under more than one category specified above and where the amount of service tax evasion or amount of CENVAT Credit wrongly taken or utilised is the same for all such offences, the compounding amount, in such cases, shall be the amount as determined for the offence for which a higher compounding amount has been prescribed.

Voluntary Compliance Encouragement Scheme,2013

The Hon'ble Finance Minister, Mr. P. Chidambaram has announced a new scheme known as Voluntary Compliance Encouragement Scheme 2013, which has come into effect from 10th May, 2013, in order to encourage voluntary compliance and broaden the tax base. It is proposed to provide one time amnesty by way of waiver of Interest, Penalty and Immunity from prosecution as well, provided provisions contained therein are duly complied with. Hereby, for the convenience of the readers, detailed discussion about the scheme converging all the relevant points are provided at one place.

What does Tax dues mean?

Tax dues means the Service Tax due or payable under the Act for the period from 1st October 2007 to 31st December 2012 but was not paid as on 1st March 2013.

Who can file a declaration of tax dues?

The scheme is applicable to all, even non-filers or stop-filers and assessees who have not made a truthful declaration in the past. Any person may declare his tax dues, in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Act has been issued or made before the 1st day of March, 2013.

Who are not eligible to file a declaration?

- Any person, who has furnished his return under section 70 of the Act and disclosed his true liability but has not paid the disclosed amount of service tax or any part thereof, shall not be eligible to make declaration for the period covered by the said return.
- Where a notice or an order of determination has been issued to a person in respect of any period on any issue, then no declaration shall be made of his tax dues on the same issue for any subsequent period.

Where to file the declaration?

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

What is the schedule for payment of tax dues?

Payment of tax shall be done as follows:

a) Atleast 50% of tax within 31.12.2013 and
b) Balance of tax within 30.06.2014 (without interest) or by 31.12.2014 (with interest for the unpaid amount from 01.07.2014).

CENVAT credit cannot be utilized for payment of tax dues under the scheme.

Whether any forms are prescribed for the purpose?

- <u>Form of Declaration</u>- The declaration in respect of tax dues under the Scheme shall be made in Form VCES-1 to the designated authority.
- <u>Form of Acknowledgement of Declaration</u>- The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.
- <u>Form of Acknowledgement of discharge of tax dues</u>: On receiving the details of full payment of declared tax dues and the interest, if any, payable, the designated authority shall issue an acknowledgement of discharge of such dues to the declarant vide Form VCES-3, within a period of seven working days from the date of receipt of the details.

When can the declaration be rejected?

- When an inquiry or investigation in respect of service tax, not levied or not paid or short paid, has been initiated by way of-
  a) search of premises under section 82 of the Act, or
  b) issuance of summons under section 83 of the Act, or
  c) requiring production of accounts, documents or other evidence under the Act or the rules made thereunder; or
- When an audit has been initiated,
- and such inquiry, investigation or audit is pending as on the 1st day of March, 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, reject such declaration.

What is the procedure for making declaration and payment of tax dues?

- First and most importantly, an assessee must have a Service Tax Registration number. If the assessee does not have a Registration No., he have to take registration with the Service Tax department to avail this scheme.
- Any declaration under this scheme is to be made to the designated authority on or before the 31st day of December, 2013 in Form VCES-1.
- A calculation sheet showing period wise and service wise Service Tax, Education Cess, SHE Cess has to be calculated and attached with the Declaration VCES-1. Any amount collected in excess of the tax liability as determined above, shall also be payable to the Government. The relevant format of Part-B from ST-3 may be used to calculate the amount of tax due.
- The declarant has to pay not less than fifty per cent of the tax dues declared, in installments or in one go, on or before the 31st day of December, 2013.
- The tax dues or part thereof remaining to be paid after 31st day of December, 2013 shall be paid by the declarant, in installments or in one go, on or before the 30th day of June, 2014.
- If a declarant fails to pay the remaining amount of declared tax dues, he shall pay the same on or before 31st day of December, 2014 along with interest thereon at a rate fixed under section 75 of the Act for the period of delay starting from 1st day of July, 2014.
- The declarant shall furnish to the designated authority details of payment made from time to time under this scheme along with a copy of acknowledgement as issued to him in Form VCES-2.
- On furnishing the details of full payment of declared tax dues and the interest (if any), the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in Form VCES-3.

Can a person making a declaration under the Amnesty Scheme be Immune from Late Fee, Penalty, Interest and any other proceedings?

The declarant upon payment of the tax dues declared by him shall get immunity from Late fees/Penalty, Interest or any other proceeding under the Act. A declaration made by an assessee shall become conclusive upon issuance of acknowledgement of discharge in Form VCES-3 and no matter shall be reopened thereafter in any proceedings under the Act before any authority or court relating to the period covered by such declaration.

What if an assessee fails to make true declaration?

Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues, not paid or short-paid, such notice shall deemed to be regular notice under Service Tax laws. No action shall be taken after the expiry of one year from the date of declaration.

What is the predictable scenario of the Scheme?

The Government has tried to develop a scheme which would help in increasing the revenue from Service Tax, by giving benefit to the Service Tax defaulters. Such scheme would definitely attract the assessees to pay the arrear Service Tax without any penal actions, rather hiding behind the walls, and worryingly waiting for the department to initiate the actions for not paying the tax.

FAQ

Recent Changes

Q *What is the procedure of getting registration in Service Tax where an assessee receives "Business Auxiliary Service" from outside India (thus being liable to pay service tax) and is already registered as service provider under the category of "Business Auxiliary Service"? Also, how the service tax return will be filed in this case?*

A In case where any taxable service is received from outside taxable territory the service receiver is the person liable to discharge service tax on the same as per Rule 2(1)(d)(i)(G) of the Service Tax Rules, 1994. So, for the "Business Auxiliary Service" received from outside India, the assessee has to get his registration amended to get himself registered as service receiver also. In this case as the assessee is already registered as service provider for 'Business Auxiliary Service' so no new category of service needs to be added, only under the option 'Person liable to pay service tax' both the options Service Provider and Service Receiver needs to selected. Hence now he will get registration for one service, where he is liable to pay tax both as provider and recipient.

For filing the service tax return, the assessee needs to select "Business Auxiliary Service" under the option 'Taxable Service(s) for which tax is being paid' only once. Also on the page 'Payable Service' where in billing details are to be given, under the option 'Assessee is liable to pay tax on this taxable service as' both the options 'A service provider u/s 68(1)' and 'A service receiver u/s 68(2)' needs to be selected. Billing and service tax payable details needs to be filled under respective columns for service provider and service receiver. Other pages in the return have to be filled as in any normal case.

Abatment to Construction Service

Entry of serial no. 12 of the abatement Notification No. 26/2012 dated 20.06.2012 has been substituted as given below :

Sl. No.	*Description of taxableservice*	*Percent -age*	*Conditions*
12.	Construction of a 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 the competent authority,- (a) for a residential unit satisfying both the following conditions, namely:– (i) the carpet area of the unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore;	25	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004; (ii) The value of land is included in the amount charged from the service receiver."
	(b) for other than the (a) above.	30	

(Notification No. 09/2013- ST dated 08.05.2013)

Rules for VCES' 2013

Service Tax Voluntary Compliance Encouragement Rules 2013 has been notifed to prescribe rules regarding the form and manner of declaration, form and manner of acknowledgement of declaration, manner of payment of tax dues and form and manner of issuing acknowledgement of discharge of tax dues under the Scheme. These have been discussed in detail in page 3 of this issue.

(Notification No. 10/2013- ST dated 13.05.2013)

Clearification on VCES' 2013

Some issues regarding the scope and applicability of the Service Tax Voluntary Compliance Encouragement Scheme 2013 (VCES) have been clarified, which have been detailed in Page 3 of this issue.

(Circular No. 169/4 /2013 – ST dated 13.05.2013)

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