Tax Talk

The Monthly Service Tax Bulletin

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Editorial

The blockade on GST front which was created by the resignation of Sri Sushil Modi has now been passed by the appointment of Sri Abdul Rahim Rather, Finance Minister of Jammu & Kashmir and National Conference Leader, as the Chairman of the Empowered Committee of State Finance Ministers on the Goods and Services Tax (GST).

The new chairman will have a formidable task of pursuing the proposed new Indirect Tax regime (GST) which will combine excise, service tax and local levies. Also, Sri Rather is the finance minister of Jammu and Kashmir that has an entirely different tax regime in our country. It is the only state that levies service tax based on the provisions of the Sales Tax Act. The state has no implications of Service Tax or Central Excise and has also got other differences from rest of the country.

On the time-frame for GST implementation, Sri Rather said: "I cannot comment on deadline of implementation because there are many issues which have to come in front of the Committee. Till the time we are not able to build consensus, we cannot decide on implementation date." He ensured that no state will suffer losses on account of rolling out of GST.

Once again major changes have been brought in the exemption provisions for the services received by a unit or Developer of SEZ vide Notification No. 12/2013-ST dated 01.07.2013, substituting the earlier Notification No. 40/2012-ST dated 20.06.2013. In the earlier notification, in order to avail the SEZ exemption, the specified services were necessitated to be used for authorised operation and **wholly consumed within an SEZ**. Earlier condition required the specified service to be wholly consumed within an SEZ which has now been done away with. Thus now the only necessity while availing exemption is that it should be used for Authorized Operations. The details have been discussed in page 3 of this issue.

The service tax return form for the period October 2012 to March 2013 has been made available in the offline excel utility only and the same can be downloaded either from www.acesdownload.nic.in or from the 'DOWNLOADS' section of www.aces.gov.in. The online version is expected shortly. It is to be noted that the due date for filing the Service Tax Return is 31st August 2013 as announced vide Order No. 3/2013 - ST dated 23.04.2013.

Considerable time has elapsed from the introduction of VCES' 2013 but still lot of confusions are prevailing. For instance, it has been provided that a declaration filed by a defaulter can be rejected if the same is found to be 'substantially' false. The word "substantially" is yet to be defined which is creating fear in the minds of the prospective declarants under the scheme because the same may become a matter of subjectivity in the hands of the departmental officers.

We, by this newsletter aim to benefit all section of professionals and business entities. If any of your friends and well wishers wants to receive this newsletter, please feel free to contact us at servicetaxgoyal@gmail.com.

Regards

CA Sushil Kr Goyal

DUE DATES

CASE	Form	Due Date
Payment of Month ending July, 2013 (assessee other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th August 2013
	E-Payment	6th August 2013

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Recovery of Service Tax

In earlier issues we have discussed penalties. In this issue we are discussing the recovery of service tax not levied or paid or short levied or short-paid or erroneously refunded through the issuance of notice under Section 73 of the Act.

Time period for the issuance of notice

Where any service tax has not been levied or paid or has been short - levied or short-paid or erroneously refunded, the Central Excise/Service Tax Officer may, within 18 months from the *relevant date*, serve notice on the person chargeable with the amount of service tax requiring him to show cause why he should not pay the amount specified in the notice.

The above time limit for issuance of show cause has been increased from 1 year to 18 months w.e.f. 28.05.2013.

Here 'Relevant date' means:

(i) In case the taxable services in respect of which service tax has escaped assessment or has been under-assessed or has not been paid or has been short-paid:

(a) Where a periodical return is to be filed by an assessee, the date on which the return is filed;

(b) where no return is filed, the last date on which such return is to be filed

(c) in any other case, the date on which service tax is to be paid.

(ii) In case where service tax is provisionally assessed, the date of adjustment of the service tax after the final assessment thereof;

(iii) In case where any sum has been erroneously refunded, the date of such refund.

Extended period of limitation

In case, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of (a) fraud or (b) collusion or (c) willful misstatement or (d) suppression of facts or (e) contravention of any of the provisions of the Act with intent to evade payment of service tax, the time limit for serving notice is within five years from the relevant date.

However, where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the period of one year/eighteen months/five years, as the case may be. [Section 73(1)]

Statement for subsequent period

The Central Excise/Service Tax Officer may serve a statement, subsequent to any notice or notices served, containing the details of service tax which shall be deemed to be service of notice, subject to the condition that the grounds relied upon are the same as mentioned in earlier notices. [Section 73(1A)]

Reply to Notice

The Central Excise/Service Tax Officer, after considering the representations made, if any, by the recipient of the notice, shall determine the amount of service tax due from, or erroneously refunded to such person (which should not be in excess of the amount specified in notice) and thereupon the person shall pay such amount. [Section 73(2)]

Normal Period always valid

With effect from 10.05.2013, in case,the appellate authority or the tribunal or the court concludes that the notice issued is not sustainable since the charge for invoking the extended period can not be established, the service tax payable shall be determined for the period of eighteen months as if the notice was issued with limitation period of eighteen months. [Section 73(2A)]

Own Ascertainment

A person chargeable to service tax, as above, may pay the amount on the basis of his own ascertainment or on the basis of tax ascertained by a Central Excise/Servie Tax Officer before service of notice to him and inform in writing. The Central Excise Officer shall not issue any notice thereafter.

However, the Central Excise Officer may determine the amount of service tax, if any, which has not been paid by such person. In this case the period of eighteen months shall be calculated from the date of receipt of information of such payment.

Further, interest is required to be paid on the amount paid by the person and also on the amount of service tax short-paid or erroneously refunded, if any, determined by the officer. But no penalty shall be imposable in respect of payment of such service tax and interest. [Section 73(3)]

Section 73(3) not tenable

The above provision of Section 73(3) will not be applicable in case, where service tax has not been levied/paid because of the reason of the earlier stated elements of fraud, collusion, etc. [Section 73(4)]

Conclusion of proceedings

During the course of any audit, investigation or verification, where it is found that any service tax has not been levied or paid or has been short levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the *specified records*, in such case the person may pay the service tax in full or in part, along with interest payable. Penalty equal to one per cent of such tax, for each month for the period during which the default continues up to a maximum of twenty-five per cent of the tax amount, should also be paid before service of notice on him and the Central Excise Officer should be informed of such payment in writing. The officer, on receipt of such information, shall not serve any notice in respect of the amount so paid and proceedings in respect of the said amount of service tax shall be deemed to have been concluded.

The Central Excise Officer may further determine the amount of service tax, if any, which he thinks remains due to be paid by such person and shall proceed to recover such amount. [Section 73(4A)]

Here Specified Records means:

Records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

Exemption - Special Economic Zone

Special Economic Zone is a particular area inside the taxable territory where various tax concessions are provided by the Government in order to attract investment in such areas. Exemption from service tax is one of them. Since the very beginning, the CBEC has changed the conditions and procedures for such exemption, many times.

A new Notification No. 12/2013-ST dated 01.07.2013 has been issued superseding Notification No. 40/2012-ST dated 20.06.2012. This notification has expanded the scope of upfront exemption as well as refund eligible to SEZ Unit or Developer. At the same time, lengthier procedure has been prescribed for claiming such exemption, as discussed below.

Options available for claiming exemption

- By **taking ab initio exemption of Service Tax,** subject to the fulfillment of conditions and procedures (as stated below), on the specified services received by the SEZ unit or developer and used exclusively for the authorized operations.
- By way of **refund of service tax paid** on the specified services received by the SEZ unit or developer and used for the authorised operations.

Earlier the services received and used for authorized operations and wholly consumed within SEZ were only exempted.

Procedure and conditions to avail ab initio exemption

1. The list of the services required for the authorised operations for which the SEZ Unit or Developer wish to claim exemption from service tax should be approved by the Approval Committee.
2. The SEZ Unit or Developer should furnish a declaration in Form A-1, along with the approved list of specified services. In this declaration, it is required to give an undertaking that in case the specified services are not exclusively used for authorised operations, it shall pay to the Government such amount as is claimed by way of exemption from service tax along with interest as applicable thereon.
3. The Jurisdictional Deputy / Assistant Commissioner of Central Excise shall issue an authorization in Form A-2, on the basis of declaration made in Form A-1, to the SEZ Unit or the developer.
4. The Service Provider shall provide the specified services to the SEZ unit or the Developer without payment of Service Tax on receipt of the authorization made in Form A-2.
5. The SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of Service Tax.

Procedure and Conditions for refund of service tax

The refund of service tax on (i) the specified services that are not exclusively used for authorized operation, or (ii) the specified services on which upfront exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

1. The list of the services required for the authorised operations for which the SEZ Unit or Developer wish to claim refund from service tax should be approved by the Approval Committee.
2. The SEZ Unit or the Developer should have fully paid the amount indicated in the invoice including the service tax payable thereon to the service provider or shall have itself deposited the service tax payable by it under reverse charge, if any.
3. The SEZ Unit or Developer which is registered under the Central Excise Act, 1944 should file the claim of refund to the jurisdictional Deputy / Assistant Commissioner of Central Excise.
4. The SEZ Unit or the Developer who is not registered as above has to get registered under Service Tax Rules, 1994 in order to claim refund.
5. In case there are more than one SEZ Units registered under a common service tax registration, a common refund may be filed at the option of the assessee.
6. The claim for refund shall be filed within one year from the end of the month in which actual payment was made or such extended period as the Assistant or Deputy Commissioner of Central Excise, shall permit in Form A-4.
7. The SEZ Unit or the Developer shall submit only one claim of refund for every quarter.
8. In case of common specified services wherein such services have been used both for authorized operation in SEZ and DTA units, service tax to the extent proportionate to the turnover of SEZ unit will be allowed to claim refund.

Proper accounts have to be maintained for receipt and use of services for which exemption/ refund is claimed. Form A-1, A-2, A-3 and A-4 are as attached to Notification No.12/2013-ST.

In case service tax paid on specified services is erroneously refunded

Where any sum of service tax paid on specified services is erroneously refunded for any reason, such service tax refunded shall be recoverable under the provisions of the Act and the rules made thereunder.

Option not to avail exemption

The new notification has resolved the current controversy of CENVAT eligibility of SEZ Unit or Developer by clarifying that the SEZ Unit or Developer has the option not to avail this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

Service Provider should ensure

If a service provider provides services to a SEZ unit or Developer, they should collect the following:

a. The registration certificate of the SEZ Unit or Developer.
b. The list of services approved by Approval Committee on which the SEZ Unit or Developer wishes to take exemption.
c. The copy of Authorization in Form A-2 as issued by the Deputy / Assistant Commissioner of Central Excise.

The Service Provider should collect the above before providing the service. This should be followed religiously otherwise the service provider would be held liable for payment of service tax and not the Unit or Developer of SEZ.

[Notification No. 12/2013-ST dated 01.07.2013]

Regular Column - FAQ

Q What should be taken care by a person who wishes to opt for the Voluntary Compliance Encouragement Scheme, 2013?

A Anybody who wishes to opt for this Scheme should note the following points-

1. VCE Scheme is intended to provide all persons liable to pay service tax with an opportunity to rectify all the defaults made by them such as non-payment or short-payment of service tax liability during the period 1st October 2007 to 31st December 2012.

2. Any person who has tax dues to declare can make declaration under the scheme only if he is having a Service Tax registration number. If such person does not have a service tax registration he is required to take registration before making the declaration.
3. The person, who has decided to declare, should also examine his tax liability under reverse charge and registration in respect for each service where he is liable to pay tax.
4. If the person has more than one premise from where he has provided/received the taxable service, he should either take a centralized registration or go for separate VCES declaration for each premise.
5. The person going for declaration should deposit the tax liability for January 2013 to March 2013 and period thereafter along with interest under normal provision.
6. He should file the return for the period October 2012 to March 2013 as VCES scheme is available upto the period ending December 2012. While filing his return it is advisable that he should write nil figures for the period October 2012 to December 2012 in the return.
7. The tax dues are to be discharged as per the point of taxation i.e. as per the rules for determining the point of taxation as existing during the period.
8. Service tax dues under VCES shall be computed at the rates applicable at the time when these taxes were originally due and not at the rates prevailing on the date of actual deposit of tax under the scheme.
9. The declarant is required to pay not less than 50% of tax dues by 31st December 2013, balance by 30th June 2014 and if the balance of 50% is not paid, the same can be paid by 31st December, 2014 alongwith interest from 1st July 2014.
10. He should take proper care in calculating the tax payable under this scheme because any amount paid in pursuance of a declaration made under this scheme shall not be refundable under any circumstances.
11. Along with the declaration in form VCES-1, a calculation sheet of tax dues is to be attached. The calculation sheet should be in a format specified as per Sr No. 3F(I) of old ST-3 for the period 1-10-2007 to 30-6-2012 and/or in a format specified as per Part B of new ST-3 for the period 1-7-2012 to 31-12-2012. Separate calculation sheets are required to be made for each service and for each return period in respect of which the declaration is being made.

BOOK POST

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