Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Wishing all of us Happy Independence Day! We have completed 66 years of our independence. This day brings a great feeling of pride and respect. On this occasion we all get an opportunity to come out of our busy schedules and pay homage to our leaders, who fought for freedom of our country and some of them even sacrificed their lives for our mother land.

In the 14th issue of Tax Talk, we have discussed the provisions of imprisonment and power to arrest. However, nobody had even a slight idea that it will be executed so soon and that too in the midst of the VCES period i.e. 10.05.2013 to 31.12.2013. More surprisingly, our city became the ever first to execute the 'arrest' power as granted to the Service Tax/Central Excise officer (Superintendent) by insertion of Section 91 through the Finance Act 2013.

The first arrest of a service tax defaulter in the country was undertaken in the early hours of the morning from his residence on 2nd August 2013, who is the owner of courier service providing organization. Arrest was made on the allegation that he had collected service tax amounting to Rs. 67 lacs approximately and had failed to deposit the collected tax.

We would like to remind that anybody, who committed an offence of collection of service tax exceeding Rs. 50 lacs but failed to deposit the amount so collected beyond a period of 6 months from the due date, has been made liable of a cognizable offence and hence the arrest can be made without a court warrant. The person may be liable for imprisonment of a term, which may extend to seven years in this case.

DUE DATES

CASE	Form	Due Date
Return for the period October 2012 to March 2013 (All Assessees)	ST-3	31st August 2013

The court, however, has granted bail to the arrested person on 9th August 2013 observing that the lawyer of the Union of India could not satisfy whether strictly custodial detention is necessary for interrogation or not. The bail has been granted under the conditions that he will report to the Superintendent every week, not allowed to leave the State of West Bengal and also has to deposit his passport.

Government is spending huge amount on publicity of VCES 2013. The slogans ascribed to the Scheme are "*Service tax bharo, Nai shuruaat karo*" and *"Be smart, Make a fresh start"*, which clearly and perfectly manifest the intention behind the scheme. Definitely, VCES has been introduced to attract the evaders for voluntary compliance of the service tax provisions providing a waiver of interest, penalties, late fee etc. Nevertheless, the declarant of VCES entering and joining the swarm of regular taxpayers are expected to continue with the compliances of the service tax law and at no cost it should be thought for availing the benefit of amnesty again and waiting for a second time amnesty benefit since as announced, it is a one time amnesty.

The Government, at its end, is trying hard to make the scheme succeed. CBEC has issued two Circulars in order to clarify the doubts arising in course of its implementation. Recently, an FAQ has also been issued by CBEC. Thus, now the main focus of the Government is to bring the evaders of service tax into the main stream of the taxpaying assessees. We also robustly feel that the arrest was made to ring the alarm bell in the mind of service tax evaders and also to get the desired result of the VCES.

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

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Voluntary Compliance

The Voluntary Compliance Encouragement Scheme 2013 commonly called VCES, has been introduced by the Finance Act, 2013 w.e.f. 10^{th} May 2013, with a view to encourage voluntary compliance and broaden the tax base. The Scheme provides one time amnesty by way of waiver of Interest, Penalty, and Immunity from prosecution as well, provided provisions contained therein are duly complied with. Basically service provider will get immunity from all proceedings under the Finance Act 1994 and Rules made thereunder. Circular 170/5/2013-TRU dated 8^{th} Aug 2013 has clarified few more issues, in this write-up, we have tried to compile all provisions related to the scheme including clarifications.

Tax Dues

Tax dues means the Service Tax due or payable under the Act for the period from 1^{st} Oct 2007 to 31^{st} Dec 2012 but was not paid as on 1^{st} Mar 2013. It has been clarified that Tax Dues means liability of service tax before taking benefit of CENVAT Credit, i.e. Gross Tax Liability.

CENVAT Cases Covered

It has been clarified that CENVAT Credit wrongly utilized while payment of service tax during the period covered in the scheme, amounts to non payment of tax. Thus, it would get covered under the head "Tax Dues".

Eligible Person

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 Mar 2013.
- Any person, who has furnished his service tax returns 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.
- Any person who has received notice under section 72 of the Act which envisages requisition of documents and evidences shall not be eligible to make declaration.
- Any person who has received notice under Rule 5A of the Service Tax Rules 1994, which prescribes for requisition of specified document by an officer authorized by the Commissioner for the purpose specified therein shall not be eligible to make declaration.
- Any letter even though referring section 14 of the Central Excise Act 1944 without proper authority will not restrict any person from making declaration.
- 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 on the same issue for any subsequent period.

As the above provision talks about a notice or an order of determination for any period under the scheme, hence, declaration can be filed on an issue where notice has been issued or Order has been passed for the period prior to Oct 2007.

Concerned Authority for filing declaration

The declaration can be made to the designated authority, who holds the position of an officer not below the rank of an Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise.

For declaration to be filed in respect of assessee registered with/falling in Kolkata Service Tax Commissionerate, the concerned authority will be the Assistant Commissioner of Service Tax, Kolkata (Technical).

Date of payment

Payment of tax shall be made as follows:

a) Atleast 50% of the declared tax dues within 31^{st} Dec 2013 and

b) Balance of tax dues within 30^{th} Jun 2014 (without interest) or by 31^{st} Dec 2014 (with interest on the unpaid amount as on 30^{th} Jun 2014 from 1^{st} Jul 2014).

Important to note:

Any declaration filed under the scheme, will be liable for rejection, on failure to pay 50% tax by 31^{st} Dec 2013.

CENVAT credit cannot be utilized for payment of tax dues under the scheme. That means full declared amount is to be paid in cash.

Grounds of Rejection

- 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 1^{st} Mar 2013, then, the designated authority shall, by an order, and for reasons to be recorded in writing, can reject such declaration.

For the purpose of determination of an event constituting initiation of audit and pendency of audit, the following points are clarified:

➢ the date of first visit of auditors to the unit of the taxpayer would be taken as date of initiation of audit. A register is maintained of all visits for audit purposes by the deparment.

➢ the audit culminates at a point when the audit paras are settled in any of the following manner.

(i) Closure of audit file if no discrepancy is found in audit;

(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);

(iii) Approval of audit para by MCM and payment of amount involved therein by the party in terms of the provisions of the Act;

(iv) Approval of audit para by MCM and issuance of SCN, if party does not agree to the para so raised.

➢ the pendency of audit as on 1^{st} Mar 2013 means an audit that has been initiated before 1^{st} Mar 2013 but has not culminated as on 1^{st} Mar 2013.

Clarifications

➢ It has been clarified that a declaration can be filed by an assessee against whom an inquiry, investigation or audit has been initiated after 1^{st} Mar 2013.

➢ Further clarified that a declaration can be filed on an issue, which is not a part of audit para(s), issued on conduct of the audit of the assessee.

False declaration

➢ Where the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme is 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 will not pay the tax dues, not paid or short-paid, such notice shall deemed to be regular notice under Service Tax laws.

- It has been clarified that the phrase "Substantially false" can not be precisely defined. It will be based on the judicious view of the Commissioner.
- An illustrative example in the circular says that if a declarant declares his tax dues as Rs. 25 lakh. However, Commissioner has sufficient information that declaration has been made only on the part of his tax liability instead of actual tax liability i.e. Rs. 50 lakh. This sort of declaration would fall in the above category.

Opportunity of being heard

A notice of intention to reject declaration filed under VCES will be given within 30 days of the date of filing such declaration. In case declarations are filed before 8th Aug 2013, 30 days would apply from 8th Aug 2013. An opportunity of being heard will be granted to the declarant before any order is passed by the designated authority.

Appeal Mechanism

The scheme does not have any statutory provision for filing appeal against the Order for rejection as confirmed also by the circular. However, we feel any order rejecting the declaration can be appeal against considering as normal order of adjudication or in High Court as writ, which is now subject matter of dispute.

However any payment made under the scheme can be adjusted against the liability, which will be determined against the assessee, on the event of rejection of appeal.

VCES forms

- *Form of Declaration*- The declaration in respect of tax dues under the Scheme shall be made in Form VCES-1 to the designated authority.
- *Form of Acknowledgement of Declaration*- On receipt of declaration, the designated authority shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.

  In case acknowledgement in VCES-2 is not issued within 7 days; declarant can start payment of tax or even they can deposit before filling of declaration. However payment before announcement of Scheme will not considered as payment under the scheme i.e. 10th May 2013.
- *Form of Acknowledgement of Discharge of Tax Dues*: On receiving 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, within a period of seven working days from the date of receipt of the details.

Steps for VCES Declaration

- The person who wishes to apply for the scheme must have a Service Tax Registration number. If the assessee does not have a registration number, he should apply for it with the Service Tax department to avail this scheme.
- 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 filled with the Declaration. The relevant format of Part-B from ST-3 may be used for the purpose.
- Any amount collected in excess of the tax liability as determined above, shall also be payable to the Government.
- 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 Dec 2013.
- The remaining amount shall be paid by the declarant, in installments or in one go, on or before the 30th day of June, 2014.
- The remaining amount can be paid on or before 31st Dec 2014 along with interest (section 75) for the period of delay starting from 1st Jul 2014.
- The declarant shall inform details of payment made from time to time under this scheme along with a copy Form VCES-2 as issued to him.
- On furnishing the details of full payment of declared tax dues the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in Form VCES-3.

Mistake in Declaration

The declarant suo-moto can approach the designated authority on discovering mistake in the declaration; the Authority may allow filling such amended declaration provided the same is furnished before 31.12.2013.

Coverage

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.

Separate units

Two separate units are treated as two distinct assesses. Therefore, declaration under VCES would be eligible to be filed for the unit of an assessee wherein no notice has been issued or order has been passed.

No amnesty on the tax dues paid before the scheme

The immunity from interest and penalty is only for tax dues declared under VCES. Thus for tax dues discharged prior to enactment of the scheme, no benefit under VCES would be available. The clarification issued by Central Government has mention that even payment made during the period 1st March 2013 to 9th May 2013 will not be considered as payment made under the scheme. If any person paid some amount during the period he can use these payments against regular liability arising w.e.f.1st Jan 2013.

Amnesty from payment of fee for late return

Incase no tax is pending but return has not been filed, benefit under scheme can not be availed because scheme is in relation to "tax dues". However, the assessee may seek benefit under Rule 7C of Service Tax Rules 1994 in case of nil returns only.

Clarifications on CENVAT Credit

Except that the CENVAT can not be utilized for the payment of tax dues, all other issues will be determined as per the CENVAT Credit Rules, 2004. Anybody availing the scheme should claim CENVAT Credit relevant for the period under the scheme, in the period which is out of the scheme i.e. period on and from 1st January 2013.

CENVAT credit, where tax dues are paid under VCES, to the service recipient will be allowed on the basis supplementary invoice, or in case tax dues are paid under reverse charge by the service recipient on the basis of service tax challan as per the CENVAT Credit Rules, 2004.

Adjustment of amount paid under VCES

Where a declarant pays certain amount under the scheme and subsequently his declaration gets rejected, the amount paid can be adjusted against the liability determined by the Department.

FAQ

Q. I have booked a commercial space under construction on consideration to be paid in installments before registration of space. The construction is being done by the builder on a leasehold land, the lease is for a period of 99X3 years. The builder is asking me to pay service tax @ 12.36% whereas I understand abatement of 70% can be availed. Which proposition stands correct?

A. The builder receives consideration in lieu of construction services provided and assignment of the lease. Assignment of such long term lease may be regarded as deemed sale of immovable property. Such long term lease assignment attracts Stamp Duty under the State Government regulations and hence such transaction will be regarded as transfer of immovable property. Hence, service tax should not be applicable in this case.

However, the transfer as discussed above is accompanied by the construction services provided by the builder and such services may attract service tax applicability.

Now, the decisive view, of whether abatement is to be allowed or not, will purely depend on the determination of the nature of the given transaction. The buyer considers the nature of transaction to be covered in the construction of commercial property and argues on grant of abatement of 70% and hence taxable @ 3.708% keeping in mind the condition of the inclusion of the value of land in order to avail such abatement. However, the contention of the builder, who charges full rate of tax, is that the nature of transaction is 'renting of immovable property' since 'renting' is defined in a way to include these sort of lease agreements, is also supportive.

Q. I have purchased a residential flat. As you have supported that service tax may be payable at full rate on leasehold property considering the transaction to be covered under renting of immovable property, so whether the transaction in hand will be out of service tax net based on the clause (m) of the Section 66D?

A. The contention of the buyer, to consider the transaction to be out of the coverage of service tax since 'services by way of renting of residential dwelling for use as residence' are included in the Negative List, is supportive but not conclusive.

The service tax liability on the above transactions are subjective and can not be specifically commented without perusing and properly assessing the agreements and all other related documents to arrive at a conclusion in relation to the actual nature of the transaction involved and hence the service tax applicability.

New Circular

A Circular has been issued providing more clarifications in relation to the Voluntary Compliance Encouragement Scheme, 2013. Clarifications have been covered in page 2 and 3 of the issue.

(Circular 170/5/2013-ST dated 08.08.2013)

BOOK POST

If undelivered, please return to :

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