Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 7 October 2013

Editorial

Greetings for the festive season coming ahead this month. Here comes Kolkata back to its festive mood after a long stressful month of Income tax return filing in which we were expecting an extension of due date which any how we did not receive. Though the online return filing date has been extended to 31st October 2013 because the assessees were having difficulties, still the same has to be submitted to the Department in manual form by 30th September 2013 only. This has preached us the lesson that from next time we should not expect for an extension and wait for the last minute as it creates a lot of work pressure. Moreover due date of Service Tax Return for the period April 2013 to September 2013 is round the corner and same will be in between the festive mood especially in the City of Joy.

CBEC has come out with Circular 171/6/2013-ST dated 17th September 2013, providing guidelines for Arrest and Bail in relation to offences punishable under the Service Tax Laws. The Circular contains details on condition preceeding the arrest, procedure for arrest, post arrest formalities and report to higher authority. This shows the Government's activeness and too much interest on the arrest front. So, the defaulters should beware as the steps taken by the Government may be severe. Detail discussions from the Circular has been provided in page 2. Once again we just like to give a soft reminder that VCES 2013 is on and the defaulters should take benefits of the same.

CBEC has issued another Circular 172/7/2013-ST date 19th September 2013, giving a detailed clarification regarding the levy of Service Tax on certain services relating to the education sector. The exemption provided in relation to "auxiliary educational services" as defined in the exemption notification is covering more area into its domain as confirmed by the circular.

Natural calamity which has united the whole of India to act and help the State of Uttarakhand. In this direction the Government has also issued an Ad-hoc Exemption Order, to provide support and ensure sustenance for the local population to revive the hospitality industry. In this context exemption is given only to Hotels and Restaurant Services. We feel exemption could have been provided for a longer duration and on a number of other servicse too.

Some modification has been done in the provision relating to reversal of CENVAT Credit on Capital Goods, which are removed after being used and on which Cenvat Credit is taken by the manufacturer or provider of output service. The Notification No. 12/2013-CE (NT) dated 27th September 2013 has substituted the Rule 3(5A) of CENVAT Credit Rules 2004 which will help assessees effected by the earlier provisions.

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.

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DUE DATES

PAYMENT	Form	Due Date
Payment of Month/Quarter ending 30th September, 2013 (All Assessee)	Cash/Cheque	5th Oct 2013
	E-Payment	6th Oct 2013
DECLARATION		
Half Yearly Declaration (Exemption to Exporters)	EXP-2/EXP-4	15th Oct 2013

DUE DATES

RETURN	Form	Due Date
Return for the period October 2012 to March 2013 (With a late fees of Rs 1000/-)	ST-3	10th Oct 2013
Return for the half year April 2013 to September 2013 (All Assessee)	ST-3	25th Oct 2013

Guidelines for Arrest and Bail

The Finance Act, 2013 has introduced Sections 90 & 91 in the Finance Act, 1994 (the Act) with effect from 10th May, 2013. The power to arrest has been introduced in cases involving evasion of service tax covered under section 89(1) (i) and (ii) of the Act, as amended and the amount of service tax evaded exceeds rupees fifty lakh. The Commissioner of Central Excise may by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

The following cases are punishable under section 89(1) (i):

- where a person knowingly evades the payment of service tax, or
- 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, or
- maintains false books of accounts or fails to supply any information which he is required to supply or supplies false information, and the amount of service tax involved is more than fifty lakh rupees.

Such cases are non-cognizable and bailable. The Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be governed by the same provisions as that of an officer in-charge of a police station has, and is subject to, Section 436 of the Code of Criminal Procedure, 1973(2 of 1974).

The following case is punishable under section 89(1) (ii):

- where a person has collected any amount exceeding fifty lakh rupees as service tax but fails to pay the amount as collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

Such cases are cognizable. After following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. The magistrate will decide on whether or not to grant bail.

Conditions for Initiation of arrest

- Since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The Act, has specified categories of offences and also prescribed value limits of evasion of service tax, as discussed, in respect of which only powers of arrest may be exercised.
- The proceedings for initiation of arrest must be strictly in accordance with the legal stipulations in the Act, An officer not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized. To authorize the arrest the Commissioner should have reason to believe that the person proposed to be arrested has committed an offence liable for arrest. The reason to believe must be based on credible material which will stand judicial scrutiny.
- Apart from fulfilling the legal requirements, the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses and large amounts of service tax evaded are relevant factors before deciding to arrest a person.

Procedure for arrest

- The provisions of the Code of Criminal Procedure 1973 (2 of 1974) relating to arrest and the procedure thereof must be strictly adhered to. It is therefore advised that the Commissioner should ensure that all officers are fully familiar with the provisions.
- There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in D.K Basu vs State of West Bengal reported in 1997(1) SCC 416 (see paragraph 35).

Contents of the arrest memo

i) brief facts of the case;

ii) details of the person arrested;

iii) gist of evidence against the person;

iv) relevant sections of the Act, or other laws attracted to the case/person;

v) the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;

vi) a nominated person of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;

vii) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested;

viii) a separate arrest memo has to be made and provided to each individual/ arrested person. Where there are several arrests in a single case.

Modalities should be complied with at the time an pursuant to an arrest:

i) A female should be arrested by or in the presence of a woman officer;

ii) Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in absence, by a registered medical practitioner, soon after the arrest is made. In case of female such an examination shall be made only by, or under supervision of a female medical officer/registered medical practitioner.

iii) It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the person.

Post arrest formalities

- The Assistant Commissioner or Deputy Commissioner in case of non-cognizable and bailable offence [Section 89(1)(i)] is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person. The arrested person should be also allowed to talk to a nominated person.
- In cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within 24 hours of arrest.
- In the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay in case of cognizable offence [Section 89(1)(ii)], the arrested person may be handed over to nearest Police Station for his safe custody, within 24 hours.
- Formats of the relevant documentation i.e. the Bail Offer Letter, the Bail Bond and the Challan for handing over to the police, in the Code of Criminal Procedure, 1973. (2 of 1974) may be followed.
- Every Commissionerate should maintain a Bail Register which will have the details of the case, arrested person, bail amount, surety amount. The money should be deposited in the treasury. The other instruments/ documents should be kept in the custody of a single nominated officer.

[Circular 171/6/2013-Service Tax dated 17th September, 2013]

Exemption to NSDC and others

Exemption has been provided by way of insertion of a new entry 9A in the notification no. 25/2012-ST dated 20th June 2012, w.e.f. 10th September 2013 to the following services provided by,

(i) the National Skill Development Corporation set up by the Government of India;

(ii) a Sector Skill Council approved by the National Skill Development Corporation;

(iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;

(iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council

in relation to

(a) the National Skill Development Program implemented by the National Skill Development Corporation; or

(b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or

(c) any other Scheme implemented by the National Skill Development Corporation.

(Notification No.13/2013 - Service Tax dated 10th September, 2013)

Clarification on Education Services

In response to the representations received from throughout the country that of various associations of schools and educational institutions seeking clarifications regarding the levy of service tax on certain services relating to the education sector, the CBEC has clarified that –

The matter is covered by two provisions of the Finance Act, 1994.

Section 66D of the Finance Act, 1994 contains a negative list of services and clause (l) thereof reads as under.

(i) Pre-school education and education upto higher secondary school or equivalent;

(ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;

(iii) Education as a part of an approved vocational education course.

Mega Exemption Notification provides that Services provided to an educational institution exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property.

In addition to the services mentioned in the definition of "auxiliary educational services", as provided in exemption notification 25/2012-ST dated 20th June 2012, the Circular clarified that auxiliary educational services will include other examples which would be hostels, housekeeping, security services, canteen, etc.

(Circular No.172/7/2013 – ST dated 19th September, 2013)

Exemption for Uttarakhand

The CBEC in an attempt to provide some relief to the local population of Uttarakhand impinged due to the devastating floods earlier this year has shown a way to revive the hospitality industry by exempting the following taxable services provided to any person in the State of Uttarakhand, namely:-

- Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes;
- Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess.

This exemption order is applicable for the above mentioned taxable services provided during the period 17th September, 2013 to 31st March, 2014.

This Ad-hoc exemption has been provided by exercising power given by Section 93(2) of the Finance Act 1994, this is something unusual because, normally we see exemption by way of Notifications.

(Ad-hoc Exemption Order No.1/1/2013 dated 17th September, 2013)

Reversal of CENVAT Credit

Provision of Rule 3(5A) of CENVAT Credit Rules 2004 relating to reversal of CENVAT Credit on Capital Goods, which has been removed after being used and on which Cenvat Credit has been taken by the manufacturer or provider of output service, has been substituted by the following -

(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(i) for computers and computer peripherals:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(Notification No. 12 /2013-CE (NT) dated 27th September, 2013)

Q We have taken services from a Goods Transport Agency for transportation of agricultural produce/food stuffs. We are liable to pay service tax under reverse charge mechanism. Transportation of these items has been exempted w.e.f. 01/04/2013 via Notification No. 03/2013 dated 01/03/2013. We have outstanding bills as on 31/03/2013 which have been paid during the current year. Whether payment made in current year would be liable to Service tax?

A Services of Goods Transport Agency in respect of the following items have been exempted by Notification No. 03/2013 dated 01.03.2013 which has amended Notification No. 25/2012 dated 20.06.2012:

a) Agricultural produce;

b) Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;

c) Chemical fertilizer and oilcakes;

d) Newspaper or magazines registered with the Registrar of Newspapers;

e) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

f) Defence or military equipments

However, after introduction of Point of Taxation Rules, 2011, taxability of a transaction is ascertained as per this rule which prescribes situations and conditions to find out the point of taxation of a particular transaction.

In case of Reverse charge, provision of Rule 7 is applicable, according to which point of taxation for recipient of service will be the date of payment of the service charges. Moreover, if the payment of the service charges is not made within six months from the date of bill, the proviso to this rule will become applicable. The proviso to this rule is as given below-

"Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist"

Therefore, in the given case if the payment has been made within six month from the date of invoice, then it will not be liable to service tax. However, if the payment is not made within six months from the date of the bill, then the same will be liable to service tax i.e., benefit of this exemption notification will not be available in that case.

Q I have decided to opt for VCES 2013. Accordingly, I have made payment of service tax for the period from 1st October, 2007 to 31st March, 2013 in a single Challan. Whether the officer can deny to accept such challan under VCES, part of which is already reflected in the ST-3 return for the period from 1st January, 2013 to 31st March, 2013?

A In the given case, emphasis should be placed on the amount declared under the VCES scheme. Whatever figures are declared to the department under VCES, only that should be treated as payment made under this scheme. It is not material that the actual amount of challan is more than the amount declared under this scheme.

Therefore, benefit of regular payment cannot be denied and excess payment made through the same challan can be used for regular payment. To conclude, payment under VCES and regular payment can be made under the same challan, no restriction in this regard has been provided.

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