Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 8

November 2013

Editorial

A Very Happy Deepawali to all. May the joy, cheer, mirth and merriment of this divine festival surround you forever. May the happiness that this season brings brighten your life and hope the year brings you luck and fulfills all your dearest dreams! This Deepawali is worth even more rejoicing as it marks joining back the convolution of the festive mood which got a stopover because of the consecutive service tax return filing due dates and the income tax return filing and corporate compliance due dates amidst them.

Kolkata has already been gifted this Diwali by Dr. P Shome, advisor to the Finance Minister who inaugurated Large Taxpayer Unit (LTU) on 28th October, 2013 in presence of the Revenue Secretary, CBEC Chairperson, Member (Service Tax), CBEC and others at 6th Floor of Kendriya Utpad Shulk Bhavan, 180 Shantipally, Kolkata. The concept of LTU is built in order to provide a gateway to convenience for taxpayers by acting as a single window clearance point for all matters relating to Central Excise, Income tax and Service tax. Taxpayer paying Rs.5 crore or more (Cash) of Excise duty / Service tax or Rs.10 crore or more of advance (income) tax / corporation tax, in the preceding financial year and who is presently assessed to income tax/corporation tax under the Income Tax Act, 1961 is classified as eligible taxpayer to exercise this option.

DUE DATES

RETURN	Form	Due Date
Payment for month ending October 2013 (assessee other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th Nov. 2013
	E-payment	6th Nov. 2013
Return for the half year April 2013 to September 2013 with a late fees of Rs.500/-	ST-3	9th Nov. 2013

CBEC has provided clarification in relation to 'Restaurant services' vide Circular No. 173/8/2013-ST dated 07.10.2013. This circular answered few doubts in respect of service tax applicability in different cases. However, we feel that certain issues for which everybody was waiting still remain unanswered by the circular like issue of sale over the counter or take away food parcel. Further, Notification No. 14/2013-ST dated 22.10.2013 has been issued exempting services provided in relation to serving food or beverages by a canteen maintained in a factory covered under Factories Act, 1948 having the facility of air conditioning or central air heating at anytime during the year. The aforesaid issues have been dealt in detail in page 2 of the issue.

Due to continuous demand and abnormal pendency at the Tribunals of our country, six more benches of CESTAT have been approved which we hope will help to clear up the backlog of pending cases more quickly and efficiently. Although none of the benches is coming up in the eastern part of the country, still we hope that the pending issues of other parts of the country if resolved, issues in the eastern part will also be resolved in near future.

Recently, a number of arrests have been made by the Government under Service tax. According to the Government, if a person was thinking to opt for VCES, he must have opted it in May itself and must not have waited all these months. Previously, the arrests were being done in metropolitan cities but now these are extending to other cities also. This will act as a force among many other people to opt for VCES Scheme. We also feel this is high time to opt for scheme if anybody wishes to do so. Waiting for December, 2013 will not be a good choice considering the provision relating to rectification in the declaration.

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.

CA Sushil Kr Goyal

20

Voluntary Compliance Encouragement Scheme, 2013

The Government is incurring huge expenditure on the publicity of the scheme. Anybody desiring to come clean of his past must take advantage of the scheme. Although the scheme is open up to 31st December, 2013 but, we feel the month of November is the right time for any body to file declaration because the time period provided for notice of the intention of the designated authority to reject the application is 30 days. So, the declarant in order to have an opportunity to modify the declaration, in case of rejection must opt for the scheme as early as possible because the last date of opting as well as of modification is 31st December, 2013.

So we thought we should once again cover this topic by way of “steps to follow” in this issue itself. The Complete procedure to avail the scheme is compiled in brief as under:-

Period covered

The scheme covers the period from 1st Oct 2007 to 31st Dec 2012.

Eligible Person

The scheme is applicable to all, even to non-filers or stop-filers and assessees who have not made a truthful declaration in the past and having tax dues as on 1st March, 2013 including on account of wrong utilization of CENVAT Credit.

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.

Steps for VCES Declaration

Step 1

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.

Step 2

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.

Step 3

Please comply with the law, as per normal procedure, w.e.f. 1st January 2013. All the interest and penal provision is applicable during this period.

Step 4

Take credit of the eligible CENVAT credit as per CENVAT Credit Rules, 2004, for the VCES period against the liability post VCES period, i.e. 1st January 2013 onwards.

Step 5

A calculation sheet showing period wise and service wise amount of service tax, education cess and SHE cess has to be filed with the Declaration. The relevant format of Part-B from ST-3 may be used for the purpose.

Step 6

The declarant has to pay not less than fifty per cent of the tax dues declared, in installments or in one go, without utilizing CENVAT Credit, on or before the 31st December 2013, else his application will be rejected.

Note: Payment before announcement of Scheme will not considered as payment under the scheme i.e. 10th May 2013. However, if any person paid some amount during such period, he can use these payments against regular liability arising w.e.f.1st January 2013.

Step 7

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.

Note: Even 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, keeping in mind the arrest and prosecution provisions.

Step 8

The declarant can suo-moto approach the designated authority on discovering mistake in the declaration and the Authority may allow filling such amended declaration provided the same is furnished before 31st December 2013.

Step 9

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, if any, can be paid on or before 31st December 2014 along with interest (section 75) for the period of delay starting from 1st July 2014.

Step 10

The declarant shall inform details of payment made from time to time under this scheme along with a copy of Form VCES-2 as issued to him.

Step 11

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, within a period of seven working days from the date of receipt of the details.

Step 12

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.

Step 13

The credit which has not been taken by the declarant during the VCES period is allowable against the liability for the period starting from 1st January 2013.

Step 14

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.

Step 15

Service Tax on Restaurant

Services provided by Restaurants etc. were brought under the service tax net by the Finance Act 2011 w.e.f. 01.05.2011. This month, some clarifications and amendment in exemption notification has been brought in relation to such services. So, we thought it is appropriate to have a write up on this service to provide complete understanding of the service to the readers.

No specific definition of "Restaurant" has been prescribed under the service tax regulations. It covers all restaurants, eating joints or a mess, cafes, food courts, food kiosks, pubs etc.

The taxability on services provided by restaurant arose on the restaurants having facility of air-conditioning or central air heating in any part of the establishment, at any time during the financial year, and also possessing license to serve alcoholic beverages. The taxability scope was expanded by curbing the exemption in respect of the said services w.e.f. 1st April, 2013. After this, service tax is applicable on services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. The condition of possessing liquor license is removed.

Applicability of Service Tax on Restaurants

Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having both:

(i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and

(ii) a licence to serve alcoholic beverages.

(Other restaurants were not taxable during the period 01.05.2011 to 30.06.2012 by excluding them from the definition of taxable services and w.e.f. 01.07.2012, exempted vide clause 19 of the Exemption Notification No. 25/2012 dated 20.06.2012)

Condition of Possessing Liquor License Removed

Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year became taxable w.e.f. 01.04.2013

(Exemption vide clause 19 of the Exemption Notification No. 25/2012 amended vide Notification No. 3/2013 w.e.f. 01.04.2013)

Exemption to Restaurants in Uttarakhand

Services provided by all restaurants in the State of Uttarakhand during the period 17.09.2013 to 31.03.2014 have been exempted from levy of service tax.

(Exemption vide ad-hoc exemption order no. 1/1/2013 dated 17.09.2013)

Exemption to Factory Canteens

Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948) having the facility of air-conditioning or central air-heating at any time during the year have been exempted from levy of service tax w.e.f. 22.10.2013.

(Exemption vide clause 19A of the Exemption Notification No. 25/2012 inserted vide Notification No. 14/2013 dated 22.10.2013)

Valuation of Taxable Service Provided

An abatement of 70% was available for the portion of the bill as relates to the deemed sale of meals and beverages subject to the condition that no cenvat credit has been availed and no exemption has been availed towards cost of goods or material sold for the period 01.05.2011 to 30.06.2012.

W.e.f. 01.07.2012, Rule 2C was inserted in the Service Tax (Determination of Value Rules), 2006 prescribing the manner of determination of the value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant. As per this Rule, Service Tax should be charged only on 40% of the Food Bill (excluding VAT or Sales Tax if any and cost of goods sold on MRP basis). In other words, 60% abatement has been granted.

Availability of CENVAT Credit w.e.f. 01.07.2012

With effect from 01.07.2012, the CENVAT Credit of excise duty paid on inputs and capital goods and service tax paid on input services has been allowed to be availed and utilized by the provider of taxable service for payment of the service tax. However, CENVAT credit of duty paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) i.e. Live Animals, Animal Products, Vegetable Products, Animal or Vegetable Fats and Oils and their Cleavage Products, Prepared Edible Fats, Animal or Vegetable Waxes, Prepared Foodstuffs, Beverages and Vinegar is NOT allowable.

CLARIFICATIONS ISSUED BY CBEC

- Air conditioned and non-air conditioned restaurants operated in a same complex

  In a complex, if there are more than one restaurant, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the restaurant having facility of air-conditioning or central air-heating is liable to service tax and service provided in a non air-conditioned or non centrally air- heated restaurant will not be liable to service tax.

  In such cases, service provided in the non air-conditioned / non-centrally air-heated restaurant will be treated as exempted service and credit entitlement will be as per the Cenvat Credit Rules.

- Services in other areas attached to restaurant

  Where services are provided by a specified restaurant in other areas e.g. swimming pool or an open area attached to the restaurant, such services in other areas of the restaurant shall be liable to service tax.

- Valuation of goods sold on MRP basis

  Clarification is also given in respect of goods sold on MRP basis (fixed under the Legal Metrology Act) across the counter as part of the bill/ invoice. It is clarified that MRP of such goods have to be excluded from the total bill amount for the determination of value of service portion.

  So next time on visiting an air-conditioned food counter, make sure you do not pay service tax on items purchased on the basis of a printed maximum retail price (MRP).

(Clarified vide circular no. 173/8/2013-ST dated 07/10/2013)

Such helpful clarification from the board are most welcomed, however, certain issues concerning most of the assessees still remain unanswered.

An intense point of concern remains unanswered till date and the same is whether service tax is applicable on sale of food vide parcels and not being served in restaurants? As most fast-food joints have air-conditioned dining space. Some of their outlets have dedicated counters for takeaway orders. Since these items are not served, the orders should not be taxed. An early clarification is required on the said for the benefit of industry as whole.

Q I am a manufacturer and have taken services from a Goods Transport Agency for transportation of goods by road. Thus, I am discharging my service tax liability in cash, under reverse charge mechanism after taking abatement of 75%. I have doubt whether I can claim CENVAT credit of such payment of tax, in order to discharge my output tax liability on manufacture?

A There are few services where abatement is granted subject to fulfillment of prescribed condition. In case of Goods Transport Agency Services, 75% abatement is available on the condition that "CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004", as notified vide notification no. 26/2012 dated 20th June, 2012. So, person liable to pay tax can take abatement of 75% if he is not taking CENVAT credit of input, input services and capital goods used for providing the GTA service.

Now a lot of confusion prevails in the minds of manufacturers or provider of taxable output services receiving such services that whether the tax paid on abated value of such services received, either by themselves as receiver of service or by provider of service as per normal rules, would be eligible to be claimed as CENVAT Credit of tax paid on Input Services (GTA) or not.

Basically the reason of confusion which is arising in every body's mind is due to merging of two set of provisions. Firstly, the provisions which are applicable while discharging service tax on GTA service, where CENVAT Credit is not allowed if one is taking abatement. Secondly, CENVAT Credit provision relevant while taking credit of input GTA service against the liability as manufacturers of excisable goods or provider of other taxable service.

The law here is crystal clear on the fact that the condition of non-availability of CENVAT Credit in order to avail abatement applies to the service provided as GTA service, whereas the service receiver should be concerned about the conditions prescribed by the CENVAT Credit Rules, 2004 for availing CENVAT Credit, i.e. the services received should be covered under the definition of "Input Services" as described in Rule 2(l) of the CENVAT Credit Rules, 2004.

From the above discussion, it is clear that any service used for clearance of final product upto the place of removal can be categorized as an Input Service. Here, the manufacturer is using the services of Goods Transport Agencies and is liable to discharge the service tax under Reverse Charge Mechanism on abated value of service received. As far as such service is classifiable as an input service, the manufacturer can claim CENVAT credit of service tax so paid in order to discharge his output tax liability on manufacture.

BOOK POST

If undelivered, please return to :

Tax Talk

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