Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Happy New Year 2014. The New Year is not just a ritual. It is the celebration of new hopes and dreams. It is an opportunity to start with a clean slate. The New Year offers us an opportunity to introspect and anticipate, to look back into the past before moving onward into the future. We're all surging forward — some with more impetus than others.

Sri Arvind Kejriwal who has rewritten the grammar of politics, took oath as the Chief Minister of Delhi promising a corruption-free government and a new style of governance without arrogance of power. This election has proved that the Indian Citizen now aspires to have a new environment free of corruption. We hope he and his team will live up to the expectations of the people and will be able to form a stable government which will lead to a new concept in politics in times ahead.

VCES once in a life time offer-No interest, No penalty and No questions asked, take full advantage of it - the Finance Minister said. Schemes like this do not come quite often. The date of VCES scheme 31.12.2013 has passed and this scheme can no longer be availed. Those who had availed the benefit under this scheme got immunity and thus, can live fearlessly. Whereas we are sorry for those assessees who had failed to grab this golden opportunity and who will consequently have to face severe repercussions.

The concept of reverse charge was first introduced in the year 1997 and changed a number of times during this period. It is quite surprising to know that people still think that Reverse Charge is applicable from July, 2012, even though considerable years have lapsed since the introduction of the same. Considering it pertinent to discuss Import of Services which is one of the areas under Reverse Charge Mechanism, we have provided a write-up in page 2 of this issue.

Service Tax so far provides online registration, amendment, filing of returns etc. which is mandatory and now e-payment of service tax covers everybody, to pay through the internet. All assessees who have paid total service tax of one lakh or more including the amount paid by the utilization of CENVAT Credit in the preceding financial year now have to deposit their service tax liability electronically through internet banking. A questionnaire with respect to E-PAYMENT has been compiled on Page 3.

The draft 'CENVAT Credit Amendment Rules' to amend Rule 7 have been put up in the circular only to elicit public response. It is expected from all concerned to give their suggestion and comment on the same.

We hope this newsletter add some value and prove to be beneficial to the readers. We highly solicit suggestions/opinions of the readers. Please feel free to convey your views at servicetaxgoyal@gmail.com

CA Sushil Kr Goyal

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DUE DATES

PAYMENT	Form	Due Date
Payment for Month / Quarter ending December 2013 (All Assessees) [Refer Page 3]	Cash/Cheque	6th Jan, 2014
	E-payment	6th Jan, 2014
Revised return for the half year April - September 2013	ST-3	90 days from filing of original return
Return for the Quarter October 2013 to December 2013 (For SEZ Unit or Developer)	A-3	30th Jan, 2014

Payment Outside India

HISTORY:

2002: First time the Government tried to levy service tax on Import of service by way of amendment in Rule 2(1)(d) of Service Tax Rules, 1994.This was applicable for the period 16.08.02 to 31.12.04 without the enabling provision in the Finance Act, 1994.

2004: After this, the Central Government used power as per Section 68(2) of the Act, by way of Notification No. 36/2004, dated 31.12.04, w.e.f. 01.01.05 notified the services where they can collect service tax from the person other than the provider of taxable service and they notified along with other services "any taxable service provided by a person, who is a non-resident or is from outside India, does not have any office in India." Now the Rule 2(1)(d)(iv) of Service Tax Rules, 1994, has support of Section 68(2) of the Act, w.e.f. 01.01.05. This was in force upto 15.06.05.

2005: Still the provision regarding tax on import of service was missing in the Finance Act, 1994, so by the Finance Act, 2005 an explanation to Section 65(105) of the Act has been inserted w.e.f. 16.06.05 to tax Import of Services in the hand of receiver of service. This explanation which prescribed taxation of services provided even out of India are taxable in India was applicable till 17.04.2006

2006: Finally, the Finance Act, 2006 inserted a new Section 66A to the Act, w.e.f. 18.04.06 with same objective but with more elaborated provisions. Also Taxation of Services (Provided from outside India and received in India) Rules, 2006 was announced w.e.f. 19.04.06 to tax the imported services in the hands of receiver of service.

The tax on import of service became payable with the insertion of new Section 66A in the Act, confirmed by the Bombay High Court. The High Court held that statutory provision being absent before enactment of Section 66A of Act, recipient in India is liable to service tax from 18.04.2006 when Section 66A was enacted and not before, for the services received from abroad.

The Service Tax Rules framed by the Government of India,(as amended from time to time) envisages that the liability to pay service tax is on the recipient of service when taxable service is provided by a non-resident or a person who is outside India and does not have any office in India.

2012: The concept of negative list has been introduced w.e.f. 01.07.2012. From this very date, Section 66A of the Act as well as rules prescribed to tax Import of Services were deleted. With effect from 01.07.2012, taxation on Import of Services is based on Place of Provision of Service as per Section 66C of the Act and rule made there under, named as Place of Provision of Service Rules 2012. Taxability of both import as well as export of services is now dependent on this set of rules w.e.f. 01.07.2012.

PAYMENT OF TAX:

In case of import of services, service recipient is liable to pay service tax under reverse charge mechanism in the respective head of services which are being received by him. Service tax is payable on gross amount of service charges paid by the importer including TDS. The service recipient is required to get registered and discharge its tax liabilities on the taxable value of services received for each category.

SERVICES:

During the period prior to 01.07.2012, taxation on Import of Services has been divided into three categories as follows:

1. Specified services which are provided in relation to immovable properties situated in India;
2. Specified services partly or wholly provided in India will be considered as provided in India;
3. Other taxable services, barring a few exceptions, when provided in relation to business or commerce, to a recipient located in India.

Post 01.07.2012, taxability of services depends on the Place of Provision Rules, 2012 which also prescribe situations where a service is deemed to have been provided.

EXEMPTIONS:

Prior to 01.07.2012, Section 66A of the Act shall not apply where the recipient of service is an individual and such service received by him otherwise than for the purpose of use in any business or commerce.

Post 01.07.2012, exemption has been provided in Mega Exemption Notification for services received from a provider of service located in a non-taxable territory from levy of service tax if received by:

(a) Government, local authority, government authority or individual in relation to any purpose other than commerce, industry, business or commerce;

(b) an entity registered under section 12AA of Income-tax Act, 1961 for charitable activities;

(c) a person located in non-taxable territory.

TAXABLE TERRITORY:

Taxable territory, as per Section 65B of the Act means the territory to which the provisions of Chapter V of the Act apply i.e. whole of India excluding the state of Jammu and Kashmir. Non-taxable territory is defined as the territory other than the taxable territory.

In this regard, "India" includes not only the land mass but its territorial waters, continental shelf, exclusive economic zone or any other maritime zone; the sea-bed and the subsoil underlying the territorial waters; the air space above its territory and territorial waters; and the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

FOREIGN COMMISSION AGENT:

We feel the whole provision regarding import of services is largely affecting exporter of goods and commission paid to a foreign agent is one of them.

2008: First time w.e.f. 01.04.2008 exemption from service tax on the commission was provided by way of refund of the same in case where the exporter has paid tax on the foreign commission.

2009: Later, w.e.f. 07.07.2009 exemption from service tax on the commission paid was provided without payment of service tax on fulfillment of the prescribed conditions i.e. by informing the AC/DC in Form EXP 1, before availing the said exemption. The exporter availing such exemption shall have to file a return in the Form EXP 2 for every half year.

2012: Presently w.e.f. 01.07.2012 exemption from service tax on the commission paid was provided without payment of service tax on fulfillment of the prescribed conditions i.e. by informing the AC/DC in Form EXP 3, before availing the said exemption. The exporter availing such exemption shall have to file a return in the Form EXP 4 for every half year.

FAQ - E-PAYMENT

Q. Who is liable to make e-payment of Service tax?

A. All assesses who are liable to pay a total service tax of Rs. 1 Lakh or more including the amount paid by utilization of CENVAT credit for the preceding financial year i.e.2012-2013 have to deposit the service tax electronically, through internet banking w.e.f. 1st January, 2014 (Earlier this limit was Rs.10 lakhs or more during the period 01.04.2010 to 31.12.2013).

Prior to 01.04.2010, the assessee who was liable to pay service tax of Rs. 50 lakhs or more in the preceding financial year or in that particular financial year were liable to deposit the tax electronically. This limit for e-payment of service tax was first introduced on 10th September, 2007.

Q. What is the due date in case of e-payment?

A. Due date for e-payment is 6th of the next month to the month/quarter for which the tax dues are payable except for the month/quarter of March for which the due date is 31st March. E-Payment can be made 24 hours a day using internet banking service of bank. However, only payment made upto 8 P.M. will be accounted on the same day and payments affected after 8 P.M. will be included in the next working day's scroll by the Focal Point Branch. So to ensure timely payment, e-payment should be made latest by 8 P.M. on the due date.

Q. How to get Internet banking facility of Bank?

A. The customers of a Bank can request for this facility in prescribed application forms to banks having internet banking facility and have been authorized for e-payment facility by CBEC for the particular Commissionerate.

Q. Which bank is authorized to accept e-payment of Service Tax?

A. For e-payment, assessees should open a net banking account with one of the authorized banks (currently there are 28 banks), list of which is available on the website of CBEC. Only an authorized bank can accept e-payment for a particular Commissionerate.

Q. After 01.01.2014, who will be eligible to make payment of service-tax through Challans?

A. We feel everybody is now required to make e-payment because persons having tax liability less than Rs. 1 lakh will basically be eligible for Rs. 10 lakh exemption. However, following may still continue challan payment:

(a) a service receiver who is liable to pay service tax less than Rs. 1 lakh for the preceding financial year.

(b) any assessee who has commenced business in the current year.

(c) any assessee who is liable to pay service tax of less than Rs 1 lakh in the preceding financial year either due to availment of abatement or by not taking Rs.10 lakh exemption.

(d) a Small Service Provider availing Rs. 10 lakh exemption and has crossed Rs. 10 lakh in the current year.

Q. What if the taxpayer faces any procedural problems at the time of e-payment?

A. In case a taxpayer faces any procedural problem, he may contact the jurisdictional service tax/ central excise office or the jurisdictional Commissioner, who will advise and extend all possible help to the taxpayers to comply with the requirement of mandatory e-payment.

Q. What if the account gets debited more than once for the same e-tax transaction?

A. If during the transaction or after completing the transaction, bank's website encounters any error or get disconnected before generating Taxpayer counterfoil, then instead of making the same transaction again kindly check your Account. If the account has been debited then contact your bank for regeneration of taxpayer counterfoil. Please note that in the above case, do not make the same transaction again, since it could result in the account being debited more than once for same e-tax transaction.

Q. How does this e-payment system benefit one as a taxpayer?

A. This system is beneficial to the tax-payers as they are not required to personally visit the bank to make the payments. Payment can be made electronically at their convenience from any place where an internet facility is available e.g. their office, residence etc. Further, the tax-payer gets the Challan Identification Number (CIN) online, which is required by them when they file their return.

Q. How secure is the transmission of data to the website for e- payment?

A. All transmission through NSDL-CBEC website are encrypted and authenticated vide Secure Socket Layer (SSL) authentication. With respect to the banks, it depends on the security measures provided by the bank for net-banking.

Q. What are the consequences if the assessee fails to make e-payment?

A. In case any person who is required to pay tax electronically fails to do so, penalty which may extend to ten thousand rupees per transaction may be imposed as per section 77(1)(d) of The Finance Act,1994.

Q. Whether payment through bank account belonging to other person/ company is allowed?

A. The only criterion is that the service tax payment is to be done electronically and should be deposited in the assessee's name and registration number and may not be from his own Bank account.

Q. What is to be done in case where the assessee does not have internet banking facility and/or does not have knowledge of the e-payment procedure?

A. The assessee may outsource the service tax payment work to a third party who usually carries out these jobs in exchange of some commission. Further, coming to the precaution issues, there is no harm in outsourcing such work but the same is to be allotted to reliable agency whom the assessee or its consultant knows of.

FAQ

Q We are a partnership firm, which receives transport services from a Goods Transport Agency. Since beginning, the transporter has been collecting and paying service tax on services received by us. Recently, we came to know that reverse charge mechanism is applicable on GTA service. Since we are paying tax to the GTA, what should we do now?

A Reverse Charge on GTA service is applicable from 01.01.2005. If the consignor or consignee, liable to pay freight, is one of the specified person, service receiver is liable to pay tax. However, prior to 01.07.2012, reverse charge was applicable on partnership firm receiving GTA service only when a partnership firm was registered, by or under any law. However, w.e.f. 01.07.2012, the clause has been modified and now it covers all partnership firms, whether registered or not under any law.

The service tax is to be discharged by the person liable to pay tax and as discussed if partnership firms satisfy the mentioned condition, they should pay tax directly to the Central Government and not to the service provider. However, in case service tax is paid to the agency, one should not pay it again. Moreover, it is advised to stop this practice and discharge service tax liability directly to the Central Government.

PROPOSED AMENDMENT

Rule 7 of CENVAT Credit Rules, 2004 deals with the manner of distribution of credit by input service distributor. The following amendments have been proposed :

Rule 7(d):-Credit of service tax attributable to service used in more than one unit shall be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the *total turnover of all its units* ~~sum total of the turnover of all the units to which the service relates~~ during the same period.

Existing Explanation 3 (Relevant Period) of Rule 7 is proposed to be replaced by:

(i) If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for a month or quarter, as the case may be, the said financial year ; or

(ii) If the assessee does not have turnover for some or all the units in the preceding financial year then, the latest quarter, for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed."

This has been put up only to elicit public response. The last date for suggestions was 27.12.2013 but any willing person can still email his views to jayaprahasam@gmail.com.

[F. No. 354/246/2012-TRU dated 17.12.2013]

NEW NOTIFICATION

A new Notification has been issued to further amend the Notification No. 06/2013-ST dated 18.04.2013 which has widened the scope of exemption in relation to taxable services provided or agreed to be provided against scrip under the Focus Market Scheme (FMS) by a person located in the taxable territory from the whole of the service tax leviable thereon under section 66B of the Act.

[Notification No. 17/2013-ST dated 26.12.2013]

BOOK POST

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