Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Its February, all of us can feel the love in the air. It is considered as the month of love. We all should take an oath to spread love and affection to all. The same is expected from the revenue department towards the tax payers and we hope that the arrest provision will not more often be exercised, as has been executed quite often in the past and during last month. At the same time, we presume that the assessees will also fulfill their obligation by discharging their tax liabilities timely on a regular basis.

'Departmental Audit' remains a terror word among assessees and the visit of the audit team from the Central Excise/Service Tax Department or CERA, is not exactly welcomed by the assessees. Generally, the books of accounts of the assessee is audited by the audit team of the Central Excise/Service Tax Commissionerate or CERA who visit their premises, raise audit objections, which result in issue of Spot memos and finally Show Cause Notices. Almost all visits by an audit team invariably results in a dispute/litigation, which would travel at least up to the Tribunal i.e. CESTAT.

Audit at the premises of the assessee by CERA was restricted by the Kolkata High Court few months back and in a recent judgement of the Lucknow Bench of the Allahabad High Court, it has been held that the Service Tax officers have no power to audit the assessees and Audit can be done only by Chartered Accountants and in the case of PSUs by the CAG (CERA). In such a situation, there are chances that the Service Tax Audit may be introduced and to be conducted by a Chartered Accountant for which ICAI is also pursuing since a long time.

Post VCES, a Circular has been issued to clarify issues regarding Cenvat Credit, which we feel failed to clarify any issue regarding the same. The circular simply states that the credit issue will be dealt by the Cenvat Credit Rules, 2004. We believe that the basic purpose of this circular is to create an impression upon the public to pay their balance tax dues as early as possible despite the due date of such payment being 30th June 2014 or 31st December 2014, as may be opted by the assessee.

Another hot point of discussion for all concerned which has cropped up recently due to the letter written by Mr.P.Chidambaram (FM) to Mr. K.V Thomas (MOS for Consumer Affair), is that, what would be considered as agricultural produce and what not. We feel there is a need to avoid any sort of litigation and confusion arising in the minds of people concerned with Service Tax. Therefore, the Government should preferably issue a list of items to be considered as an agricultural produce or not an agricultural produce. Detailed discussion on this topic has been carried out in Page 2.

The Government has also issued a circular, regarding Residential Welfare Association (RWA). The circular is largely discussing the exemption available to Residential Welfare Association as per the Notification No. 25/2012-ST dated 20.06.2012 which we feel is not in the line with the language of the Notification. We also feel that the exemption given upto five thousand rupees is available in all cases. This has been discussed in detail in the article on Page 3.

We hope this newsletter will 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

DUE DATES

PAYMENT	Form	Due Date
Payment for Month ending ending January 2013 (assessees other than individual, proprietorship firm, partnership firm and LLP	Cash/Cheque	5th Feb, 2014
	E-payment	5th Feb, 2014

Note: Please opt for e-payment if your tax liability during the F.Y. 2012-13 was more than Rs.1 lakh (Challan + Credit), else penalty of Rs 10,000/- may be imposed.

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Agricultural Produce

The issue regarding an 'agricultural produce' is always in discussion under Service Tax almost for a period of 10 years, which has taken a different direction for discussion among all concerned affected with it since 01.07.2012. The same issue has cropped up again and has become a point of aggression. Recently, a letter written by Union Finance Minister, Sri P. Chidambaram to Union Minister of State for Consumer Affairs, Sri K.V. Thomas, meant that paddy rice and raw cotton is an agricultural produce whereas rice and baled/ginned cotton are not agricultural produce. So the issue that what would be considered as an agricultural produce and what not, has become fresh again. We feel that there is a need to settle the issue once and for all, to avoid any sort of litigation and confusion in the minds of people concerned with Service Tax. Therefore, the solution to this long drawn discussion/ confusion can only be settled down, if the Government issues a list of items to be considered as an agricultural produce or not an agricultural produce.

We through this article want to discuss issues relating to 'agricultural produce' after introduction of the negative list concept i.e. with effect from 01.07.2012.

The word 'agriculture' and 'agricultural produce' has been defined in the Finance Act, 1994 as follows:

Section 65B(3): **"Agriculture"** *means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;*

Section 65B(5): "***Agricultural produce*** *means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market."*

Certain services performed in relation to an 'agricultural produce' are kept out of the Service Tax net by virtue of the same being included in negative list of services (Section 66D of the Finance Act, 1994 as amended) or by grant of exemption (Notification no 25/2012-ST dated 20.06.2012 as amended). Such exemptions or non leviability of service tax on services are primarily dependent on the decision as to whether a particular item is an agricultural produce or not. Moreover, it is also important to find out the point of time and activity upto which a produce is or will be considered as an 'agricultural produce'.

The Negative List provides following in clause (d) of Section 66D of the Finance Act, 1994:

Services relating to agriculture or agricultural produce by way of :

i) agricultural operations directly related to production of any **agricultural produce** including cultivation, harvesting, threshing, plant protection or testing;
ii) supply of farm labour;
iii) processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of **agricultural produce** but makes it only marketable for the primary market;
iv) renting of agro machinery or vacant land with or without a structure incidental to its use;
v) loading, unloading, packing, storage and warehousing of **agricultural produce**;
vi) agricultural extension services;
vii) services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of **agricultural produce**;

The following definition is also relevant to understand the entire concept of Service Tax in relation to 'agricultural produce':

Section 65B(4): ***"Agricultural extension"*** *means application of scientific research and knowledge to agricultural practices through farmer education or training;*

Section 65B(6): ***"Agricultural Produce Marketing Committee or Board"*** *means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;*

Further, Notification 25/2012-ST dated 20.06.2012 as amended specifically exempts certain services in relation to an 'agricultural produce' which are as follows:

- Services by way of construction, erection, commissioning, or installation of original works pertaining to post- harvest storage infrastructure for agricultural produce including cold storages for such purposes.[Sl no.14(d)]
- Services by way of construction, erection, commissioning, or installation of original works pertaining to mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages. [Sl no. 14(e)]
- Services by way of transportation of agricultural produce by rail or a vessel from one place in India to another.[Sl no.20]
- Services provided by a goods transport agency by way of transportation of agricultural produce in a goods carriage.[Sl no. 21]
- Carrying out an intermediate production process as job work in relation to agriculture. [Sl no. 30(a)]

The Education Guide has also clarified the following:

(a) Processes such as grinding, sterilizing, extraction packaging in retail packs of agricultural products which make agricultural products marketable in the retail market are not covered by the Negative List since this exemption is available only in respect of services that make agricultural products marketable in the primary market.

(b) Activities like the processes carried out in an agricultural farm would also be covered even if the same are performed outside the agricultural farm provided such processes do not alter the essential characteristics of agricultural produce but only make it marketable in the primary market. Therefore, cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm. Shelling of paddy would not be covered in the negative list entry relating to agriculture as this process is never done on a farm but in rice sheller, normally located away from the farm.

(c) Where shelling is done by way of a service i.e. on job work then the same would be covered under the exemption relating to 'carrying out of intermediate production process as job work in relation to agriculture

(d) Plantation crops like rubber, tea or coffee are also covered under 'agricultural produce'

(e) Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce and therefore, do not fall within the definition of 'agricultural produce'.

In the backdrop of above provisions, talking specifically about rice, to render rice fit for marketing in the primary market, de-husking of rice is essential and the same is usually not carried out by the cultivators. De-husking is similar to the removal of pod or peeling of skin of fruits which never alter the basic character of the fruits. We hope this debate about the same will be resolved only when the government comes out with a conclusive answer.

Resident Welfare Association (RWA)

Resident Welfare Association (RWA) is an association in residential complexes or localities formed by the members residing in the complex or locality. The basic purpose of a RWA is to share the management, maintenance and repair expenses of the complex. It is usually registered as a co-operative society with the Registrar of Co-operative Societies and even slums and illegal housing localities can form RWAs to share common expenses incurred for the said purpose.

RWAs are sometimes thought to be covered under 'Management, Maintenance or Repair' Service by many people since it pertains to the management and maintenance of the society. However, RWAs are covered by 'Club or Association Service' being associations providing service to members, which was introduced under the Service Tax regime with effect from 16.06.2005.

Now, a circular has been released by the department to address certain doubts that have been raised regarding the scope of the service provided by RWA including exemption extended to RWAs under the negative list approach.

1. Monetary Ceiling on Contribution

Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 provides the following at entry No. 28(c):-

> *"……hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely: Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution* ***up to an amount of*** *five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;"*

As per the aforesaid Notification, contribution upto an amount of Rupees five thousand per month per member was exempt and beyond that it was taxable. **For example**, any amount collected by RWA as contribution from the members of the society for providing services for the common use of all the members is exempted upto an amount of Rs.5000 per month per member. Therefore, if the share of any member is Rs.7500 per month then only Rs.7500-Rs.5000= Rs.2500 is leviable to service tax. This provision is applicable w.e.f. 01.07.2012.

Prior to this, exemption was provided by Notification 08/2007-ST dated 01.03.2007. We found that to have better understanding of the exemption available now, this will also be relevant.

The following is the extract of the Notification No. 8/2007-ST dated 1st March 2007 which was valid upto 30th June, 2012:-

> *"………hereby exempts the taxable services, specified in sub-clause (zzze) of clause (105) of section 65 of the Finance Act, 1994 provided or to be provided, by a resident welfare association where the sole criterion for its membership is the residential status of a person in a residential complex or locality, to its members, from the whole of the service tax leviable thereon under section 66 of the said Act,* ***subject to the condition*** *that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month."*

> As per the circular, it has been clarified that in case, per month per member contribution of any or some members of the RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members i.e. in the above example, the entire contribution of Rs. 7500 will be taxable.

Observation:

We feel that the circular issued is mostly discussing the exemption available to Residential Welfare Association which we feel somewhat contradicts the language of the Notification No. 25/2012-ST dated 20.06.2012. We also feel that the exemption given upto five thousand rupees is available in all cases i.e. where the contribution by members to a RWA is more than five thousand rupees, the entire amount is not taxable. The amount upto five thousand rupees is exempt and beyond that, it is taxable.

We would like to add that circulars are not mandatory on assessees. Assessees have the right to have views which may be contradictory to the circular. But those who wish to go against the circular should also prepare themselves for long drawn proceedings which may go upto any higher level of judiciary. However, we would also like to put forward the decision of the apex court in relation to circulars which are not beneficial to assessees. The apex court held that this type of circular will have prospective and not retrospective implication.

2. SSP Exemption to RWA

The exemption for Small Service Providers available under Notification No. 33/2012-ST dated 20.06.2012 is applicable to a RWA, subject to conditions prescribed in the notification. As per this notification, an assessee is eligible to avail exemption from Service Tax if the aggregate value of the taxable services provided by him does not exceed ten lakh rupees in any financial year.

Observation:

This provision is self-explanatory and there was no confusion regarding this issue. So no discussion is required.

3. RWA acting as pure agent

As per Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.

Where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.

Observation:

This provision is self-explanatory and there was no confusion regarding this issue. So no discussion is required.

4. Cenvat Credit available to RWA

RWA is eligible to avail Cenvat Credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

Observation:

This provision is self-explanatory and there was no confusion regarding this issue. So no discussion is required.

(Circular 175/1/2014-ST dated 10.01.2014)

FAQ

Q I had received an Order-In-Original passed by the Assistant Commissioner of Service Tax two and half months ago. It is mentioned in the order that I can file an appeal within three months of the date of receipt of the order. However, when I went to file an appeal I was told that the appeal is late for submission.

A In some of the orders, by mistake, it is mentioned that the appeal shall be filed within a period of three months of the receipt of the same but with the enactment of the Finance Act, 2012, w.e.f. 28.05.12, any person aggrieved by the order passed by an officer below the Rank of the Commissioner may file an appeal before the Commissioner of Central Excise (Appeals) within a period of two months. However for the orders passed before 28.05.2012, the time for filling an appeal is three months. It may also be noted that the period of two/three months is to be ascertained from the date of the communication of the order and not from the date of the passing of the order. Therefore, under such circumstances the evidences of the communication of order i.e the envelope in which the order is received must be preserved by the assessee for safeguarding itself from future disputes.

The appellant, in case fails to file an appeal within the prescribed period which is now two months, due to a reasonable cause, then under such situation, he may file such appeal along with a request for condonation of delay, within one month from the expiry of the prescribed time of two months. Prior to 28.05.12, such request could have been filed within three months from expiry of the then prescribed time limit of three months.

Exemption

Exemption provided in Serial No. 11(a) of Notification No. 25/2012-ST dated 20.06.2012 to service by way of sponsorship of sporting events organised by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone has now been extended to include teams or individuals representing any country as well.

(Notification No. 01/2014-ST dated 10.01.2014)

Governmental Authority

Definition of Governmental Authority has been widen in the Notification No. 25/2012-ST dated 20.06.2012 to expand the coverage of exemption granted to the services provided to / by the Governmental Authorities.

(Notification No. 02/2014-ST dated 30.01.2014)

VCES CENVAT Clarification

A new clarification has been issued as to whether the first installment of tax dues paid under VCES, 2013 would be available as CENVAT Credit immediately after payment or after payment of tax dues in full and receipt of Acknowledgement of Discharge in form VCES-3. It is clarified that the eligibility of CENVAT credit would be governed by the CENVAT Credit Rules, 2004.

It is also clarified that a declaration made under VCES shall become conclusive only upon issuance of acknowledgement of discharge which will be issued within a period of 7 working days from the date of furnishing of details of payment of tax dues in full along with interest.

It would be in the interest of VCES declarant to make payment of the entire service tax dues at the earliest.

(Circular 176/2/2014-ST dated 20.01.2014)

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