Tax Talk
The Monthly Service Tax Bulletin

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Editorial

A Hearty Gratitude to all our readers. With this issue, our monthly service tax bulletin has completed the second year of its publication. While having a sense of contentment and achievement, we also shoulder the responsibility to deliver some value addition with every issue. We accept that it has been achieved because of continuous encouragement, support and appreciation from all the wonderful readers and associates connected with our publication.

The upcoming month will bring in the festive mood of Holi, a fiesta of colour and joy. We wish the vibrant colour will bring happiness in everybody's life along with the spirit of joy, passion and enthusiasm.

The Union Cabinet has set up the seven-member Committee to restructure Tax administration in Direct Tax as well as Indirect Tax, popularly known as TARC to work as an advisory body to the Ministry of Finance. The panel will submit its first report to the Government by the end of May. After this, there will be four quarterly reports as decided by the Committee. The TARC would also recommend measures minimizing dispute resolution, improving services and tax-payers' education programme. The commission has already gathered industry suggestions from all the metros.

DUE DATES

PAYMENT	Form	Due Date
Payment for Month ending February 2014 (assessees other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th Mar, 2014
	E-payment	6th Mar, 2014
Payment for month/quarter ending March 2014 (All Assesses)	Cash/Cheque/ E-payment	31st Mar, 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.

We had our interim budget or vote on account on 17.02.2014 where Mr. P. Chidambaram while mentioning about GST in his speech said that, "*I am disappointed that we have not yet been able to introduce GST*" - lobbing the ball back to the opposition parties for failing to hammer out a political consensus. He further added, "*I leave it to you to answer the question, who blocked the GST when an agreement on the game-changing tax reform was around the corner?*" He also mentioned about DTC that, *"We have also got ready a Direct Taxes Code that will serve us for at least the next 20 years. I appeal to all political parties to resolve to pass the GST laws and the DTC in 2014-15"*.

After Interim Budget, BJP Leader Narendra Modi, who had a series of interactions with traders, CAs and business leaders on this topic said, "*BJP is in full favour of GST. Infotech connectivity is a prerequisite for the implementation of GST*".

Thus, we feel GST is now round the corner, as both the major political parties are supporting it. The scenario will be clear only after the new Lok Sabha Constitution and a renewed Government will be in place.

Everyone is now of the view that Service Tax has expanded its wings beyond expectation. This view is confirmed by two of the recent moves of the department. Firstly, they have issued notices to Tirupati Balaji Temple (Tirumala Tirupati Devasthanams), requiring it to pay Service Tax on the charges collected on the facilities provided to the pilgrims. Secondly, they have issued notices to BJP offices demanding service tax on the money collected on distribution of invitation cards for NaMo rallies.

This month's highlights are exemption to 'Rice, Cord Blood Bank and Sub-brokers' and amendment in provision related to 'Input Service Distributor'. These are appropriately discussed in Page 2 and 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.**

Sushil Goyal.

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Input Service Distributor

The concept of Input Service Distributor has been introduced to transfer credit which is accruing at an office of the manufacturer or producer of final products or provider of output service, which receives invoices towards the input services.

This system of Input Service Distributor in case of output service provider, also allows credit of duty paid on inputs and capital goods received. The credit will be allowed on the basis of an invoice, bill or challan issued by an office or premise (i.e. ISD) of the said provider of output service, towards the purchase of input or capital goods. The facility of distribution of credit on inputs and capital goods is not available to the manufacturers.

Registration

Every Input Service Distributor (ISD) is required to get themselves registered as per Service Tax Rules, 1994. This has been specifically provided in the Service Tax (Registration of special Category of Persons) Rules, 2005. The due date for registration is 30 days from the date of commencement of business or 16.06.2005, whichever is later.

If anybody has not taken registration as Input Service Distributor and has taken CENVAT Credit which is received by an office other than registered premises from where the taxable services are provided or excisable goods are manufactured, it may be denied on the ground that registration is not obtained for the office as Input Service Distributor.

Return

The ISD is also liable for filing of return in ST-3. The CENVAT Credit Rules 2004, in rule 9(10) provides last day of the month following the half year for filing of return whereas we understand that the ISDs are governed by Service Tax law, which prescribes that the ST-3 return should be submitted within 25th day of the month following the half year. Therefore, it is advisable that one should file its return by 25th of the month following the half year.

Challan

The rule 4A(2) of Service Tax Rules,1994 provides that every Input Service Distributor, in respect of credit to be distributed shall issue an invoice, bill or challan for each of the recipient of the credit distributed. It should be serially numbered and following details should be mentioned thereon:

(a) Name and address of the Input Service Distributor.

(b) Name, address and registration number of the person providing input services.

(c) Serial Number and date of invoice, bill or challan issued for distributing the credit.

(d) Name and Address of the recipient of the credit distributed.

(e) Amount of the credit distributed.

Rule 7 of CENVAT Credit Rules, 2004 prescribes the manner of distribution of credit by Input Service Distributor which will be amended w.e.f 01.04.2014.

Amended Rule 7 of CENVAT Credit Rules, 2004

"The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely:-

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service ***used by one or more units*** *exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;*

(c) credit of service tax attributable to service ***used wholly by a unit*** *shall be distributed only to that unit; and*

(d) credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.

Explanation 1. - For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

Explanation 3. - For the purposes of this rule, the 'relevant period' shall be,-

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

(b) If the assessee does not have turnover for some or all the units in the preceding financial year, the last 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."

Implications of Amendment

a) 'Service used in the unit' has been substituted by 'services used by one or more units' which means that if services are being used outside the premises of manufacturer of exempted goods or provider of exempted services and used by the unit , then the credit for the same cannot be distributed.

b) 'Services used wholly in a unit' has been substituted by 'services used wholly by a unit' which means that if services are being used outside the premises of manufacturer or output service provider and used wholly by the unit, then the credit for the same shall be distributed to that particular unit only.

c) Before the amendment, relevant period was the month/quarter previous to the month/quarter during which Cenvat Credit is distributed. After the amendments being made, relevant period shall be the financial year preceding to the year when such Cenvat Credit was distributed. This in turn, would lead to more accurate amount of Cenvat Credit that can be distributed.

d) Before the amendment, when turnover of some of the units is not available in the preceding financial year then turnover of all its units shall be considered after the end of such relevant period. Post amendments, if there is no turnover details of some of the units in the preceding financial year, then turnover of all the units (which are operational) of the quarter prior to the month/quarter for which Cenvat Credit is distributed can be considered. Hence, the condition of "end of relevant period" has been eliminated.

[Notification No 05/2014- CE (N.T.) dated 24.02.2014 applicable from 01.04.2014]

Relief to Sub-broker

The Central Government has granted relief to sub-brokers or authorized persons of the member of a recognized association or a registered association, in relation to a forward contract by providing a retrospective exemption from service tax on the services provided by such persons for the period 10.09.2004 to 30.06.2012. The said services are already outside the service tax purview with effect from 01.07.2012.

[Notification No.03/2014-ST dated 03.02.2014]

Exemption to Cord Blood Banks

Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation have been exempted from the levy of service tax by virtue of insertion of a new entry no. 2A in Notification No.25/2012-ST dated 20.06.2012. This exemption would cover services provided by cord blood banks for and in relation to preservation of stem cells, such as collection of umbilical cord blood, processing the same for segregation of stem cells, testing and cryo-preservation of stem cells, etc.

[Notification No.04/2014-ST dated 17.02.2014]

Cotton Yarn – Includible in the Calculation

Notification No. 06/2013 dated 18.04.2013 exempted the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory subject to the condition that certain specified categories of exports shall not be counted for calculation of export performance or for computation of entitlement under the Focus Market Scheme. These specified categories were broadened to include cotton yarn by way of Notification No.17/2013-ST dated 26.12.2013. Now, with effect from 24.02.2014, the said entry namely "cotton yarn" has been deleted from the list of specified category of exports to be excluded for the said purposes. Hence, from 24.02.2014 onwards export of cotton yarn and all other entries related to it will now be includible for the purposes of calculation of export performance or for computation of entitlement under the Focus Market Scheme.

[Notification No.05/2014-ST dated 24.02.2014]

Exemption to Rice

Exemption has been provided by way of insertion of a new entry no. 40 in Notification 25/2012-ST dated 20.06.2012 on services provided by way of loading, unloading, packing, storage or warehousing of rice.

[Notification No.04/2014-ST dated 17.02.2014]

Agricultural Produce Vs Rice

In response to concerns shown by everyone relating to rice, the CBEC has given exemption and clarified vide circular that 'Paddy' falls within the definition of agricultural produce whereas 'Rice' is not an agricultural produce.

It has been further clarified in the circular that Rice is already enjoying the following exemptions:

- As per Sl. No. 20(i) of Notification No. 25/2012, services by way of transportation of **foodstuff** by rail or a vessel from one place in India to another is exempt from Service Tax.
- As per Sl. No. 21(d) of Notification No. 25/2012, as amended by Notification No. 03/2013 dated 01.03.2013, services provided by a goods transport agency by way of transport in a goods carriage of **foodstuff** including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil excluding alcoholic beverages is exempt from Service Tax.
- As per Sl. No. 30(a) of Notification No 25/2012 dated 20.06.2012, services provided by way of carrying out an intermediate production process as job-work in **relation to agriculture**, printing or textile processing are exempt from Service Tax. Since milling of paddy is an intermediate process in relation to agriculture, therefore, Service Tax is exempt when paddy is milled into rice on job-work basis.

[Circular 177/03/2014-ST dated 17.02.2014]

The aforesaid circular, though said to provide clarifications, still creates certain ambiguity and confusions. On one hand, it is clarified that exemptions in relation to transportation of "Rice" as enumerated in the said circular are available on the basis that "Rice" is categorized under "**Food Stuffs**" and exempted from 01.04.2013. However, prior to inclusion of "Food Stuffs" in the exempted category since 01.04.2013, transportation of "**Food Grains**" were already under the exempted category of items since 27.02.2010. As per normal understanding, Food Grains should include Rice.

Hence, it may be seen that the exemption for transportation of rice by a goods transport agency is sought to be curbed to be available only w.e.f. 01.04.2013 instead of 27.02.2010 by clarifying Rice as Food Stuff.

Further, once the circular says that "Rice" is NOT an Agricultural Produce and then it goes on to enumerate that "milling of paddy" is an intermediate process in relation to agriculture. We understand that an intermediate process in relation to agriculture should ideally result in production of an agricultural produce. Paddy being clarified to be an agricultural produce and rice not an agricultural produce, enumeration of Milling of Paddy as an intermediate process in relation to agriculture again gives rise to confusion regarding the same. Such ambiguities should either be clarified by the Ministry at the earliest or else it might lead to unwanted litigations and would thereafter stray before the judicial authorities for uncertain period.

FAQ

Q We are a service provider, providing 'Construction of Residential Complex' services. One of our customers had booked a flat after paying an advance and the service tax on it. The tax so collected was duly deposited. Now, the customer cancelled the booking. What should be the treatment of service tax already discharged by us?

A In this case, the provisions of Rule 6(3) of the Service Tax Rules, 1994 will be applicable which reads as under:

*"Where an assessee has **issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason**, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee-*

(a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or

(b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued."

It is clear from the above rule, that the service tax so deposited on receipt of advance amount, will be available with the assessee to take credit (adjustment) of the same while discharging the future output tax liability, provided, the advance amount is either refunded to the customer or assessee has issued a credit note for the value of services not provided by him along with service tax.

Q In the given case, if you have refunded the amount or a credit note is issued along with service tax, you can adjust such amount of service tax against subsequent liabilities.

In some cases, the invoice amount gets negotiated on various grounds. Can we take the adjustment of excess service tax paid in such case also, which is not realized by us?

A The second part of the referred rule incorporates that where the amount of invoice is renegotiated due to deficient provision of service or any terms contained in a contract, then also the credit of excess service tax paid can be taken, provided you have issued a credit note for the value of service not so provided to the person to whom such invoice had been issued.

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