Tax Talk

The Monthly Service Tax Bulletin

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Editorial

A very Happy and Prosperous New Financial Year to all our readers. Hope this new Financial Year 2014-15 will bring lots of financial achievements in our lives. We also want to express our gratitude by thanking all of you for showering your blessings filled with appreciations through e-mails and messages on completion of the 2nd year and entering the 3rd year of our publication. This is our 25th issue or you can also call it our Silver Jubilee Issue. We have been able to achieve this milestone only because of the continuous encouragement and support from all our readers and those who are associated with our bulletin.

New Revenue Secretary, Shri Rajiv Takru will be taking charge from 1st day of April on retirement of Shri Sumit Bose and Shri Gurdial Singh Sandhu, as Finance Secretary, appointed in place of Shri Rajiv Takru. Also, we all know that after a few days, whatever may be the result of elections, we are sure to have a new Finance Minister because none of the earlier Finance Ministers is going to take charge again for one reason or the other. This time we hope to have a dynamic new Finance Minister who along with the new constitution in the finance department will meet the expectations of the public at large.

Almost everyday reports about arrests under service tax are coming. We are seeing arrests taking place for evasion of service tax in every part of the country. Recently, the Pune-III Central Excise and Service Tax Commissionerate had detected a case of service tax evasion amounting around Rs.40 crores which was not paid even though the same was collected from the clients by the company. Apart from arrest, the Department is now also approaching the debtors of the Company to make payments directly to the Department by attachment of trade debtors, which is not only damaging the reputation very badly of the organization but also causing undue hardship in some cases.

Planning Commissions Deputy Chairman, Mr. Montek Singh Ahluwalia, recently said, I am quite hopeful that at the end of the elections, whichever government comes to power, it will be in a position to get moving on some of the major reforms, one of which is GST. According to him, economists widely believe that it will not only help to improve the fiscal system, but also boost the efficiency of the entire system. Thus, we feel that GST may come within this year as almost all the major scenarios are in favour of the same.

TARC Chairman and Advisor to Finance Minister Mr. Parthasarathi Shome recently in an event organized by ASSOCHAM said that TARC will also look into amalgamation of Direct and Indirect Tax Departments. According to him, it would be much easier for assessees if the departments are amalgamated. However, on the practical front, we have full doubt about how far it will be realistic in our country because he not only seeks to merge Income Tax and Central Excise Departments but also the State and Central Government Tax Administration Departments by including VAT into the prospective.

The months highlight is allowance of refund of unutilized Cenvat Credit taken on inputs and input services to the service provider providing services under reverse charge subject to the procedures, safeguards, conditions and limitations. This issue is appropriately discussed in 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

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DUE DATES

Return	Form	Due Date
Return for the half year October 2013 to March 2014 (All Assessee)	ST-3 (Online)	25th April, 2014
Return for the quarter January 2014 to March 2014 (For a SEZ Unit or a Developer)	A-3 (Physical)	30th April, 2014
Declaration		
Half Yearly Declaration (Exemption to Exporters)	EXP-2/EXP-4 (Physical)	15th April, 2014

Input Service

Cenvat Credit of Service Tax paid on Input Services is allowed to be utilized for payment of service tax liabilities in case of **service providers** and for payment of excise duty in case of **manufacturers**; subject to conditions as may be applicable. The term Input Service is itself defined in the Cenvat Credit Rules, 2004 and sometimes creates confusions in terms of its interpretation. We aim to discuss the description of input service by this write up as under:

The term *input service* has been defined in Rule 2(l) of Cenvat Credit Rules, 2004 in three parts. First part (i.e. "means" part) gives the meaning in a confined manner, second part (i.e. "includes" part) expands the scope of the definition and the third part (i.e. "excludes" part) curbs the ambit to certain extent.

The "means" part of the definition states:

"input service means any service --

i. used by a provider of output service for providing an output service; or

ii. used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal"

This part of the definition gives the base line of categorizing a service as an input service. In case of service providers, the main ingredient that constitutes an input service is that such service should be USED for providing an output service by the provider. In case of manufacturers, this part of the definition provide the coverage to input services as it is said to mean any service that is **used in or in relation to** manufacture of final products and even clearance of final products upto the place of removal by the manufacture **whether directly or indirectly**.

The "includes" part of the definition states:

"includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurements of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal"

This part of the definition basically expands the coverage of the definition by including a lot of services that cannot be interpreted as input services only by the means part. It is an inclusive or comprehensive or intensive clause in the definition. The services in relation to setting up of factory or premises of service provider and the word activities relating to business have been removed from 01.04.2011 making the inclusion part narrower from the earlier one.

The "excludes" part of the definition:

This part of the definition, included from 01.04.2011 later modified, carves out certain services so as to not include them under the ambit of the definition of input services. The excludes part being quite intrinsic in nature, the same is discussed clause wise as under:

"A. service portion in the execution of a works contract and construction services including services listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for-

a. construction or execution of works contract of a building or a civil structure or a part thereof; or

b. laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services"

Clause A of the excludes part of the definition states that the works contracts services availed or construction services including services of builders or developers shall not be categorized as Input Services unless and until the same are availed by a provider of such services only for further provision of such services.

"B. services provided by way of renting of a motor vehicle in so far as they relate to a motor vehicle which is not a capital goods or

BA. service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by

a. a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

b. an insurance company in respect of a motor vehicle insured or reinsured by such person"

The said clauses of the definition wipes out the service used in relation to motor vehicles such as renting, insuring, repairing and maintenance from the coverage of the definition. However, such services shall constitute an input service when the same are used in relation to a motor vehicle which is owned by the user of such services or is used by a manufacturer of motor vehicles for such vehicles as are manufactured by it or is used by an insurance company for the vehicles insured or reinsured by it.

"C. such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee"

Clause C is the last clause of the definition and it though is a exclusive part of the definition, still suggest certain services can be brought within the purview of the definition for categorization and classification of the same as input services. The services mentioned under this clause are excludible only when such services are used primarily for personal use or consumption of any employee of the manufacturer or the provider of service.

It can be seen that though the definition is quite elaborate, there remains stances of ambiguity. However, a keen and intense study of the provisions suggests that the interpretation made should be logical and reasonable and in consonance with other legal provisions.

Refund of Unutilised Cenvat Credit

Introduction

Under Reverse Charge Mechanism, liability to discharge service tax is either entirely on service receiver or partly on service providers and partly on service receivers (also known as services under Partial Reverse Charge). Cenvat Credit on inputs and input services arises only at the service provider point. Since the service provider does not liable to pay or pays only a part of the service tax liability under reverse charge mechanism, there would be accumulated/unutilized portion of Cenvat Credit in the hands of service provider. Taking these things into consideration, government included Rule 5B to Cenvat Credit Rules, 2004 to allow refund of unutilized Cenvat Credit to service providers providing services under reverse charge mechanism.

Rule 5B of the Cenvat Credit Rules, 2004 states that a provider of service providing services notified under reverse charge and being unable to utilize the Cenvat Credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilized Cenvat Credit subject to procedures, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.

Unutilized Cenvat Credit is available both in case of services under fully reverse charge and also in case of services under partial reverse charge. Rule 5B just mentions that refund of unutilised Cenvat Credit will be allowed to services under reverse charge. It was nowhere mentioned that refund only on services under partial reverse charge will be allowed.

Eligibility

A provider of service providing the following output services, also called the partial reverse charge services, namely:-

i) renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in a similar business;

ii) supply of manpower for any purpose;

iii) security services; or

iv) service portion in execution of works contract;

and being unable to utilize the Cenvat Credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilized Cenvat Credit subject to procedures, safeguards, conditions and limitations.

Computation

Unutilized CENVAT credit shall be computed as Total CENVAT credit taken on inputs and input services during the half year for providing partial reverse charge services less the service tax amount paid by the service provider for such partial reverse charge services during the half year.

Conditions for claiming refund

a) The refund shall be claimed of unutilized Cenvat Credit taken on inputs and input services during the half year for which refund is claimed, for providing the output services.

b) The refund of unutilized Cenvat Credit shall not exceed the service tax liability of the service receiver paid or payable by him with respect to the above mentioned services provided during the half year for which refund is claimed.

Safeguards for claiming refund

a) The amount claimed as refund shall be debited by the service provider to his Cenvat Credit account at the time of making the claim.

b) In case the amount of refund sanctioned by the department is less than the amount of refund claimed, then the claimant may take back the credit of the difference between the amount claimed and the amount sanctioned.

Limitations for claiming refund

a) The claimant shall submit not more than one claim of refund for every half year.

b) The refund claim shall be filed after filing of service tax return for the half year for which refund is claimed.

c) No refund shall be admissible for Cenvat Credit taken on inputs and input services received prior to 01.07.2012.

Procedure for filing the refund claimed

a) The provider of output service shall submit an application in Form A as annexed to the notification along with the documents and enclosures specified therein, to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, before the expiry of one year from the due date of filing of return for the half year.

b) At the time of sanctioning the refund claim, the Assistant Commissioner or Deputy Commissioner shall satisfy himself or herself in respect of the correctness of the refund claim and that the refund claim is complete in every respect.

Documents required for filing the refund claimed

a) The applicant shall file the refund claim along with copies of the return filed for the half year for which refund is claimed.

b) The Assistant Commissioner or Deputy Commissioner to whom the application for refund is made may call for any document in case he has a reason to believe that information provided in the refund claim is incorrect or insufficient and further enquiry needs to be caused before the sanction of the refund claim.

Due Date for filing the refund claimed

a) Refund is to filed before the expiry of one year from the due date of filing of return for the half year.

Provided that the last date of filing of application in Form A, for the period starting from the 1st day of July,2012 to the 30th day of September,2012, shall be the 30th day of June,2014;

b) If more than one return is required to be filed for the half year then the time limit for one year shall be calculated from the due date of filing of the return for the later period.

[Notification No.12/2014 C.E. (N.T.) dated 3rd March, 2014]

FAQ

Q Our company is receiving regular services for maintenance and repairs of office building, office equipments (in form of AMC with parts also) and motor vehicles. We want to know whether we are liable to service tax under reverse charge mechanism or not. How to find applicability on us?

A The reverse charge on Works Contract Service is applicable with effect from 01.07.2012. The type of services mention in the Q may be considered either as works contract service or service contract. For a service to fall under the category of Works Contract Service the following two conditions must be satisfied:

1. there should be transfer of property in goods which should be liable to tax under VAT Law and
2. such contract is for the purpose of construction, erection, commission, installation, completion, improvement, repair, renovation and alteration of any movable or immovable property.

If the above conditions are satisfied then the said services will fall under the category of Works Contract Service otherwise it will be considered as service contract.

If the said services fall under the category of Works Contract Service then the question of service tax liability under reverse charge mechanism arises. But if it falls under the category of service contract then no question of service tax liability arises under reverse charge mechanism.

Moreover, the liability to pay service tax under Works Contract Service under reverse charge mechanism arises if the said services are provided by Individual/ HUF/ Partnership firm/ AOP/ LLP to business entity registered as body corporate.

With effect from 01.07.2012 vide Notification No. 30/2012-ST dated 20.06.2012, stipulates, among others, that recipient of service, in respect of services provided or agreed to be provided in relation to the execution of a works contract has to pay 50% of Service Tax payable on the value of service portion of such serviced and balance by service provider.

Moreover, one who is liable to pay service tax under Works Contract Service should take care of value on which tax is payable. Value of Service portion in the execution of works Contract is to be determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006.

Thus, if the services received fall under the category Works Contract Service and it is received from Individual/ HUF/ Partnership firm/ AOP/ LLP then you are liable to pay 50% of Service Tax on the value of service portion of such serviced under reverse charge mechanism.

BOOK POST

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