Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 2 May 2014 ₹ 5/-

Editorial

We would like to congratulate the Election Commission of India for peacefully conducting the Lok Sabha elections so far. We appreciate the mass participation of common people, who against all odds and under this scorching heat came up to cast their decisive votes. The turn up of masses in these elections is indeed a very encouraging sign for the political health of the country. Increase in the numbers of voters together with rising percentage in terms of votes casted so far augurs well for the democratic setup of the country.

Under the prevailing circumstances when the whole country is struck with election fever, CBEC has also been very dormant in its approach. It has been nearly sixty days since the CBEC has come up with any Notifications, Circulars, or trade notices for that matter. There may be several reasons for such an approach, it may be due to the elections, or due to the devastating summer which is every day touching new heights in terms of the rising mercury. It may also be the case that they are waiting for the new government to off load if anything at all is accumulating at their end. We can take it as an encouraging sign for all of us that Service Tax Laws are slowly settling down after all the hick-ups in the recent past.

The due date of filing of service tax returns was in the month of April as well as it was also a month to receive show cause notices. If you have not filled your return yet please do it quickly otherwise the late fee will start swelling up and ultimately reach to its maximum. Our advise to those who have received the show cause notices is please take your time to represent your case because the preparation at this stage will help you at appellate level also.

After the judgment passed by the Kerela High Court regarding the non-leviability of Service Tax on restaurant services, stating that only VAT should be levied, a subsequent judgement has been passed by the Bombay High Court reinstating that Service Tax should be levied on restaurant services. Such contadictory judgements have created huge amount of confusion among the assessees and we hope that the government will soon come up with a solution regarding the same.

We also feel that after the consensuses built among the political parties on the ground of GST, it may come into effect any time, even in 2014 to our surprise, nobody knows. Hence we are bringing a write-up on GST on page 2 of the issue, which will help you to understand basics of GST in India.

We thought the Rent a cab service, now having complexity of the provision related to this service, requires some discussion. A detail compilation of the provision related to this service is provided on page 3 of the issue, hope the readers will find it useful.

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.

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26

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DUE DATES

PAYMENT	Form	Due Date
Payment for month of April (assessees other than individuals, proprietorship firm, partnerships firm and LLP	Cash/Cheque	5th May, 2014
	E-payment	6th May, 2014

Note : Please opt for e-payment if your tax liability during the F.Y. 2013-14 was more than Rs.1 lakh (Challan + Credit), else penalty of Rs.10,000/- may be imposed.

DUE DATES

RETURN	Form	Due Date
Half Yearly Return for the period October 2013 - March 2014 (With a late fees of Rs.500/-)	ST-3	10th May, 2014
Half Yearly Return for the period October 2013 - March 2014 (With a late fees of Rs.1000/-)	ST-3	25th May, 2014

Note : For delay beyond 25th May 2014 Rs.1000 + Rs.100/day (Maximum Rs.20000/-).

The indirect tax structure in India is based on multiplicity of taxes, tax rates, tax periods, threshold limits, and endlessly diverse and exponentially multiplying provisions. Therefore, in order to bring a uniform experience as well as simplicity to the herculean system, the Goods & Service Tax (GST) model has been proposed to be introduced. The replacement of the state sales taxes by the Value Added Tax in 2005 marked a significant step forward in the reform of domestic trade taxes levy by State Government.

The Empowered Committee of State Finance Ministers in its first discussion paper highlighted the following aspects of GST:

a) GST to be levied on the destination based principle.
b) Model of GST will include two models, namely:
   i. Dual GST Model
   ii. Integrated GST Model (For interstate transfer of stock and sale).
c) Credit mechanism with respect to CGST and SGST specifically laying down that no cross utilization will exist between CGST and SGST.
d) All taxes on Goods & Service except customs duty to be subsumed in the GST.
e) Benefits for units located in SEZs and under Special Industrial Area Scheme.

The essential details of the dual GST are still not known. Under such situation the following areas are to be looked upon:

a) Will it necessitate a change in the constitutional division of taxation powers between the Centre and the States?
b) Will the taxes imposed by the Centre and the States be harmonized, and, if so, how?
c) What will be treatment of food, housing, and inter-state services such as transportation and telecommunication?
d) Which of the existing Centre and State taxes would be subsumed into the new tax?
e) What will be the administrative infrastructure for the collection and enforcement of the tax?

Dual GST Model

- A federal setup is followed in India where through certain legislations; the power to levy and collect taxes has been provided to both the central Government and the state Government.
- Under this model, tax is levied by both the centre and the state governments. Therefore, supply of goods and services would attract both Central GST (CGST) and the State GST (SGST) comprehensively.
- Both the levels of government would implement taxes on the same value or on the same price. For the purpose of levying CGST, the location of the supplier and the recipient within the country is immaterial. However, as far as SGST is concerned, taxes will be levied only when both the supplier and the recipient is located within the state.
- The dual model of GST would be implemented through multiple statutes i.e. one for CGST and SGST statute for every state.
- But uniformity would be maintained for some of the basic features such as chargeability, definition of taxable event and taxable person, measure of levy, valuation, and classification. The CGST and SGST would be accordingly paid to the central or the state government's treasuries depending upon whether it belongs to the central or the state government.
- It also eliminates tax cascading, which occurs because of truncated or partial application of the Centre and State taxes.

Integrated GST Model

Under this model, it has been proposed to tax inter-state transactions on the basis of the principle based on destination, henceforth all the sale of goods and rendering of services will be broadly taxed in the state where services are rendered or goods are delivered. In this context, it would be worthwhile to discuss the significant features of taxability of inter-state transactions under the GST regime as mentioned in the discussion paper of the empowered committee of State Finance Ministers:-

a) The Centre would levy IGST (which would be aggregate of CGST and SGST).
b) IGST would be levied on all inter-state transaction of taxable goods and services.
c) Appropriate provisions for consignment or stock transfer of goods and services will be made.
d) The inter-state seller will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his purchases.
e) The exporting State will transfer to Centre the credit of SGST used in payment of IGST.
f) The Importing dealer will claim credit of IGST while discharging his output tax liability in his own State.
g) The Centre will transfer to the importing State the credit of IGST used in payment of SGST.

GST based on the principle of destination

The structure of GST in India shall be based on the principle of destination. Henceforth, income will accrue to the state in which the consumption takes place or is deemed to take place. The recommendations put forward by the empowered committee are as follows:-

a) Exports outside India should be zero rated.
b) Imports of goods in India should be subjected to both CGST and SGST at the time of importing irrespective of whether the imported goods are produced domestically.
c) Imports of services to be taxable under the reverse charge mechanism on the basis of the place of provision of service rules.

Summation of taxes under GST

Central Taxes to be subsumed under the Goods and Services Tax:

- Central Excise Duty
- Additional Excise Duties
- The Excise Duty levied under the Medicinal and Toiletries Preparation Act
- Service Tax
- Cesses and surcharges

State taxes that would be subsumed within the GST are:

- State VAT
- Central Sales Tax
- Luxury Tax
- Entry Tax (other than those in lieu of octroi)
- Entertainment Tax (not levied by the local bodies)
- Taxes on advertisements
- Taxes on lotteries, betting and gambling
- State cesses and surcharges insofar as they relate to supply of Goods or services.

Tax Rate under GST

- The rate structure adopted by the Empowered Committee was based on a two-rate structure.
- A lower rate for necessary items and items of basic importance and a standard rate for goods in general. There will also be a special rate for precious metals and a list of exempted items.
- For taxation of services, there may be a single rate for both CGST and SGST.

The Empowered Committee describes the GST as "a further significant improvement - the next logical step - towards a comprehensive indirect tax reforms in the country." However, these benefits are critically dependent on a neutral and rational design of the GST. We should keep our finger crossed, hoping that the much awaited GST model is introduced as soon as possible.

Renting of Passenger Vehicles

Service Tax on "Rent-a-Cab Service" was introduced for the first time on 16.07.1997. Later, the government exempted the service from service tax during 28.02.1999 to 31.03.2000. So, it once again became taxable from 01.04.2000. The complexity of this service increased many fold from 01.04.2012 and further from 01.07.2012 with the amendment in Cenvat Credit Rules, 2004 and introduction of Negative List concept as well as Partial Reverse Charge on the service. These provisions are compiled here to have complete understanding about the present provisions related to the service.

After deletion of service wise definition of taxable services, under the Negative List regime, renting of motor vehicles to carry passengers has been refered for the purpose of different provisions of law like Abatement, Reverse Charge, Cenvat Credit and Place of Provision.

The service provided under this head does not require the service provider to own the motor vehicle to be liable for service tax. A provider of the service can take a motor vehicle on hire from a third party and then rent it out to its customers. Additionally, the purpose for which the vehicle is being rented is not relevant. The vehicle may be rented out for any purpose for levy of Service Tax.

Negative List/Exemptions:

(i) Clause (o) of Section 66D of the Finance Act, 1994 includes following in the Negative List of Services:

(o) service of transportation of passengers, with or without accompanied belongings, by-

(i) a stage carriage;

(ii) railways in a class other than-

(A) first class; or

(B) an airconditioned coach;

(iii) metro, monorail or tramway;

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs, radio taxis or auto rickshaws;

(ii) Entry 9 of Notification 25/2012-ST dated 20.06.2012 exempts "Services provided to an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services"

The term "auxiliary educational services" also includes the services of transportation of students, faculty or staff of educational institution.

Abatement:

An abatement of 60% on the taxable value in respect of the service has been provided. Thus, service tax is chargeable on 40% value of the service. However, abatement can be claimed only if 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.

Reverse Charge Mechanism:

Reverse charge is applicable when:

- service is provided or agreed to be provided by any **Individual, Hindu Undivided Family or Partnership Firm(includes LLP), whether registered or not, including association of persons,** located in the taxable territory and
- service is received by a **business entity registered as a body corporate,** located in the taxable territory who is not engaged in similar line of business.

RCM provides two options to discharge Service Tax liability:

Options	Service Provider	Service Recipient
Tax on abated value	Nil	100% (4.944% Tax)
Tax on Non-abated Value	60% (7.416% Tax)	40% (4.944% Tax)

It is applicable only when the services are rendered to any person who is not engaged in the similar line of business. Hence, suppose a rent-a-cab service provider "A" provides rent-a-cab service to another rent-a-cab provider "B" who in turn provides such services to clients. In such a case, reverse charge will not be applicable on B.

Cenvat Credit :

Definition of Input service specifically excludes the following w.e.f. 01.04.2012:

(B) Services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods;

Definition of capital goods, includes motor vehicles in Clause (C) w.e.f. 01.07.2012 which is as under:

"motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-

i. transportation of passengers; or

ii. renting of such motor vehicle; or

iii. imparting motor driving skills.

In view of the above provisions, continuing with the above situation, the assessee "B" is eligible to take credit of his input service taken from A since the motor vehicle is considered as capital good. But if B wants to take abatement benefits for himself, he will have to forego the benefits of credit. The service provider A may or maynot avail the abatement benefits.

The service tax paid on renting of passenger vehicle services availed by employees working in a factory or used for bringing employees to the factory may be eligible as input credit as the service can be argued as used indirectly in relation to manufacture or as part of business activity.

Place of Provision :

The place of provision of service of hiring of passenger vehicle will be the location of the service provider if hiring is provided upto a period of one month as per Rule 9 of Place of Provision Rules, 2012.

In case if period of hiring is beyond one month, then the place of provsion will be the location of the service recipient as per Rule 3 of the Place of Provision Rules, 2012.

FAQ

Q **We are builder of a Residential Complex. We have started preliminary work to construct the complex from 1st April, 2014. We are presently getting the plan prepared and sanction of the same from appropriate authority. We are expected to start booking of residential unit from 1st October, 2014. When should we apply for registration?**

A As provided in Rule 4 of Service Tax Rules, 1994 every person is liable to make an application for registration withing 30 days of commencement of business of providing taxable services. From your above query, we understand that you are doing preliminary work now and you will start inviting customers or receiving advance from prospective buyers from 1st October, 2014. Hence, you are required to apply for registration within 30th of October, 2014. Preparing for commencement of business no way requires you to apply for registration unless you start business of providing taxable service.

Q **We also want to know that if we want to take credit of services which we are availing at present like architect, consultant or others, will it be allowed as credit and whether we have to take registration immediately to avail credit of these services?**

A As per definition of Input Service as provided in CENVAT Credit Rules, 2004, any service used by a provider of output service for providing an output service will be considered as input service and accordingly tax paid on it will be allowed as Credit. The registration during the period of availing input service is not required by any provision of law. Hence, you can accumulate credit for the unregistered period also and utilize such credit after registration.

Q **In case if we are not required to take registration now, whether we have to inform to the department anything in this regard or in regard of cenvat that we are going to take?**

A Information in respect of above is not required to be provided by a service provider to the department. You can show the credit accumulated during the unregistered period in your first Service Tax Return.

BOOK POST

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

Owner: M/s Goyal Tax Services Pvt. Ltd., **Printer & Publisher**: Mrs. Reena Goyal Published from Stephen House, Room No. 64, 4 B. B. D. Bag (East), 4th Floor, Kolkata - 700 001 And **Printed from** M/s CDC Printers Pvt. Ltd., Tangra Industrial Estate-II (Bengal Pottery), 45, Radhanath Chowdhury Road, Kolkata - 700 015. **Editor**: CA Sushil Kumar Goyal.