Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Happy CA Day!!! CA profession in India has completed 65 years. I pray to all my professional colleagues to pledge to take the glory of ICAI to new height and not to indulge in any activity which may dent the reputation of our profession.

The new Government will present its first General Budget 2014-15 on July 10 and high expectations surround the event. On one hand, citizenry/aam aadmi expects raising the tax exemption limits, deduction levels, etc. The major thrust in this budget that people would love to see is in terms of inflation. However, this has been a matter of conflict between the Government and the RBI. While according to RBI, it is out of its scope to curtail the interest rate, the Government focuses on the growth agenda for which interest rate has to fall.

On the other hand, there are a few pressing concerns that the new Government must address. Proper relief/concession needs to be advanced to trade and industry also, taking into consideration the suggestions received from the trade and industry associations with respect to direct and indirect taxes. We are all eagerly waiting to see how these issues will be addressed in the upcoming budget.

In the meeting with State Finance Ministers, the Finance Minister, Mr. Arun Jaitley has urged the State Governments to support the Goods and Services Tax (GST) saying it can significantly improve economic growth. This is definitely good news since it will accelerate the implementation of GST.

CBEC has once again laid down instruction to adjudicating authorities to follow judicial discipline scrupulously in all adjudication proceedings. The Board directed the field officers to peruse the Order of the Hon'ble High Court of Gujarat in the case of M/s E.I. Dupont India Pvt. Ltd. for complete understanding of the issues involved and directions of the Hon'ble High Court on the need to follow judicial discipline. The Board also directed to peruse the judgement of the Hon'ble Supreme Court in case of Kamalakshi Finanace Corporation Ltd. which is an authoritative pronouncement on the issue. We hope that this will help the assessee to get the relief at the lower adjudication level, consequently saving time, cost and energy of asessees and also reducing the burden of the appellate authorities.

The TARC, constituted to recommend reforms exclusively in tax administration, submitted its first report of 550 pages. The Commission in its report suggested merging the CBDT with the CBEC in the next five years with a common board called the Central Board of Direct and Indirect Taxes. The report also recommended, abolishing the post of revenue secretary and that the present functions of the Department of Revenue should be allocated to the CBDT and CBEC. We sincerely hope that these worthy suggestions put forward by the TARC would be taken up by the Government for its quick implementation. Highlights of the report has been provided in page 3 of the issue.

In our earlier issues, we had already focused on "input" and "input services" as defined in the CENVAT Credit Rules, 2004, this time we are focusing on "capital goods" as detailed in page 2 of the issue.

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

PAYMENT	Form	Due Date
Payment for Month/Quarter ending June 2014 (all assessees)	Cash/Cheque	5th July, 2014
	E-payment	6th July, 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
Revised return for the half year October 2013 - March 2014	ST-3	90 days of filing of original return
Return for the quarter April 2014 to June 2014 (For a SEZ Unit or a Developer)	A-3 Physical	30th July, 2014

The term 'Capital goods' has been defined under Rule 2(a) of Cenvat Credit Rules, 2004. This definition is restrictive and not an inclusive one. Hence, only those items that are specifically mentioned in it can be considered as capital goods. Even though items to be considered as capital goods are specifically stated in the definition, there is always a lot of ambiguity among assessees as to which item will be considered as capital goods for the purpose of availing CENVAT credit of the duty paid on such goods. We aim to discuss the concept of capital goods by this write up.

The definition of capital goods has four parts:

The first part of the definition states:

"(A) The following goods, namely-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipments;

(iii) components , spares and accessories of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) storage tank; and

(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers, used:-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the final product for generation of electricity for captive use within the factory; or

(2) for providing output service;"

In case of manufacturer: The capital goods must be used in the factory of manufacturer of final products (except when it is used for generation of electricity for captive use within the factory). The purpose for which these capital goods are used is not relevant. Thus, if such capital goods are used for processing, quality control, testing, material handling or any other purpose, credit of the duty paid on such goods will be available. However, goods used in the office of manufacturer are not eligible for CENVAT credit.

In case of service provider: The definition is not wide enough to cover all the goods mentioned in the definition, unless the capital goods are used for providing output service. However, service provider can even take credit on the equipment or appliances used in office if the same are used for providing output service.

CENVAT credit would be available on:

i) goods falling under the following:

(a) Chapter 82: Tools, implements, cutlery, spoons and forks of base metal and parts thereof of base metal;

(b) Chapter 84: Nuclear reactors, boilers, machinery, mechanical appliances and parts thereof;

(c) Chapter 85: Electrical machinery and equipment and parts thereof, sound recorders and reproducers, television images and sound recorders and reproducers and accessories of such articles;

(d) Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof;

(e) Heading 6805: Natural or artificial abrasive powder or grain, on a base of textile material, of paper and paper-board or of other materials, whether or not cut to shape or sewn or otherwise made up;

(f) Grinding wheels and the like, and parts thereof falling under heading 6804.

ii) pollution control equipments

iii) Components, spares and accessories of the goods mentioned above in i) and ii).

iv) goods mentioned at sl No. (iv), (v), (vi), (vii) of the first part of the definition.

v) motor vehicles, other than falling under headings:

8702: motor vehicles for the transport of 10 or more persons (including driver) and their chassis;

8703: motor cars and other motor vehicles principally designed for transport of persons (including station wagons and racing cars) and their chassis;

8704: motor vehicles for transport of goods (including dumpers) and their chassis;

8711: motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars and their chassis.

Dumpers and tippers would also be covered under capital goods.

The second part of the definition states:

"(B) motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

(i) providing an output service of renting of such motor vehicle; or

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency."

Motor vehicles which are designed for transportation of goods will be considered as capital goods if they are used directly in providing the output service of renting of such motor vehicles or transportation of inputs and capital goods which are used for providing output services or courier agency. Such motor vehicles must be registered in the name of service provider.

The third part of the definition states:

"(C) 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"

Motor vehicles that are designed to carry passengers will be considered as capital goods if they are used directly for providing the output service of transportation of passengers, renting of such motor vehicles or for imparting motor driving skills. Here also such motor vehicles must be registered in the name of service provider.

The fourth part of the definition states:

"(D) components, spares and accessories of motor vehicles, which are capital goods for the assessee."

The last part of the definition expands the scope of capital goods by including components, spares and accessories of such motor vehicles which are eligible to be classified as capital goods, as mentioned above.

GST Updates

The Indian Government has been struggling to introduce Goods & Service Tax (GST), which has been considered to be one of the most important tax reforms in the history of the country. The major hurdles are politically driven, where the consensus between the Centre and State Government are still eluding. Principally, most of the State Finance Ministers appear to give their assent on moving to GST regime, however, the same is contingent on the Centre to compensate the States adequately to cover any adverse impact on revenues.

According to the Confederation of Indian Industries (CII) press release issued recently, it was stated that in the pre-budget consultation meeting with the Ministry of Finance, the CII has strongly urged for early implementation of GST as a sure means of lifting investor sentiment and putting the Indian economy back on track.

The Finance Minister during a meeting with state finance ministers, who hold the key to implementing the crucial tax reform, Mr. Jaitley said some “vexatious” issues remain that need to be addressed for implementation of the new tax regime.

Implementation of GST has the potential to significantly improve the growth story. Many of you would recall that a decision to implement GST was taken in 2007-08 and an empowered committee was formed for building consensus on this issue,”

In a recent report released by CRISIL, it was stated that, “implementation of goods and services (GST) tax could help government raise tax revenues and reduce fiscal deficit, which has been around 4.5 per cent in the last three years”.

Even on the international front, various world economic leaders believe GST to be a major breakthrough once it is brought into the domain. Speaking at a function recently, on release of the World Bank’s Report on Global Economic Prospects 2014, Mr. Onno Ruhl, World Bank’s Country Director-India suggested that India should roll out GST, reduce subsidies, and broaden tax base to promote growth, projecting it to be lower at 5.5 percent for 2014-15, from the earlier forecast of 5.7 percent.

We also feel GST has been the topic for discussion for a while now; the pressure of providing some impetus to the introduction of GST in the upcoming budget is huge on the Finance Minister. It’s time for the government to unleash GST, keeping in mind the objective of fiscal consolidation and achievement of inclusive growth.

Highlights of TARC Report

The Central Government constituted the Tax Administration Reform Commission (TARC) headed by Dr. Parthasarathi Shome to suggest core reforms in the tax administration set-up in the country. The TARC has come up with its `first report' dated 30th May, 2014 wherein several critical and far-reaching suggestions, intended to radically change the working of the revenue departments have been made. Some of the recommendations are as follows:

A. Customer Focus

i. The Department should treat the taxpayer as a 'customer' and have 'customer focus' in its attitude.

ii. There should be a dedicated organization for delivery of taxpayer services with customer focus for each of the Boards, i.e. the CBDT and CBEC. There should be an exclusive Member in each Board for the taxpayer services.

iii. Taxpayer service delivery will be located under one umbrella for large taxpayers,

i.e., the CBDT and CBEC will jointly function for large taxpayers through Principal DG Large Business Service (LBS).For other taxpayers, i.e., medium and small, the operations of the CBDT and CBEC will continue in separate chains.

B. Structure and Governance

i. The two Boards must embark on selective convergences immediately to achieve better tax governance, and, in next five years, move towards a unified management structure with a common Board for both direct and indirect taxes, called the Central Board of Direct and Indirect Taxes.

ii. The convergence can begin for large business segment by setting up of a large business service (LBS) which will be integrated and operated jointly by both the Boards. This will be taxpayer segmentation by the tax administration, and joining LBS will not at the option of the taxpayer. All the core tax functions will be managed jointly by officers of both the Boards.

iii. An Independent Evaluation Office (IEO) should be set up to monitor the performance of the tax administration, promote accountability, evaluate the impact of tax policies and assess all factors that affect tax administration. IEO will report to the Governing Council so as to ensure its independence.

iv. A Tax Council should be set up to develop a common tax policy, analysis and legislation for both direct and indirect taxes. The council will be headed by the Chief Economic Adviser of the Ministry of Finance.

v. The tax administration needs to have greater functional and financial autonomy and independence from governmental structures, given their special needs.

C. People Function

i. Both the departments should shift all their key operations to the digital platform so that performance can be reliably measured.

ii. Recruitment needs to be made on the basis of carefully drawn recruitment plans that balance the short and long term needs and career aspirations of officers.

D. Dispute Management

i. Retrospective amendment should be avoided as a principle.

ii. Hearing in all tax cases by personal presence should be avoided and data can be sought through an e-system. Personal hearing should be sought only in complex cases.

iii. Appeals to high courts and the Supreme Court should only be on a substantial question of law.

iv. On disposal of a case by Supreme Court/High Court and if the judgment is accepted by the Department, an instruction should be issued to all authorities to withdraw appeal in any pending case involving the same issue.

E. Key Internal Processes

i. Both central excise and service tax should be covered under a single registration as both the taxes are administered by the same department and cross utilization of credit is permitted between central excise and service tax under the CENVAT Credit Rules, 2004.

ii. The CBEC should set up an e-portal and all invoices should be issued from that portal. This portal should be linked and made compatible with SAP ERP systems, which a majority of the companies use for their own invoicing. E-invoice would simplify credit/refund procedures, which would become automatic.

FAQ

Q We are a provider of construction services (works contract taxable @ 40%). We also provide construction services to railways. Our total billing for the previous financial year was Rs. 16,00,000/- out of which Rs. 3,00,000/- was in respect to the billing made to railways. Are we eligible for SSP exemption?

A Exemption to small service provider has been extended vide Notification 33/2012-ST dated 20.06.2012, the extracts of which is produced below:

"…hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act".

Further, the term 'aggregate value' has also been defined in the said Notification as under:

*"**aggregate value** means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."*

From the above definition, it is clear that for computing the aggregate value for determining whether or not the assessee is eligible for SSP exemption, only the value of taxable services should be taken.

Construction in respect of railways is exempted under Mega Exemption Notification and since such services are exempt from whole of service tax leviable thereon, they will not be included in the computation of aggregate value.

Further, Rule 2A of Service Tax (Determination of Value) Rules, 2006 provides for determination of value of service portion in the execution of a works contract. Rule 2A further provides that the person liable to pay tax on the service portion involved in the execution of the works contract shall determine service tax payable on taxable value (arrived at by applying prescribed rates of percentage on the total amount charged for the works contract). This taxable value i.e. 40% (in the present case) of the total amount charged for the works contract, shall be considered for the determination of aggregate value to avail SSP Exemption.

Thus, in the given case, the aggregate value of the taxable service will be 40% of Rs. 13,00,000/- i.e. Rs. 5,20,000/- and thus, you be eligible for SSP Exemption in the current financial year.

BOOK POST

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