Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Sri Narendra Modi led NDA government nears completion of its 100 days in power, experts are putting together reporting cards analyzing the government's performance over the past three months or so. Further, Finance (No. 2) Bill, 2014 has received the assent from the President on 06.08.2014.

We understand that this is the fastest ever enacted Finance Act. It has been enacted in 26 days (including holidays) after its presentation. The provisions also became applicable after enactment unless specified otherwise. Moreover, the pre-deposit provision in case of appeal also became effective from 06.08.2014 which requires some clarifications from the government, which is expected soon.

Recently, the Hon'ble Delhi High Court in the case of *"Travelite (India) vs. Union of India & Ors."*, while discussing the validity of Rule 5A(2), which talks about visit by audit party deputed by the Commissioner or the CAG, held that Rules only give effect to statute's provisions and intent and cannot be used to create substantive rights, obligations or liabilities that are not within the contemplation of the statute. Further held that the only audit within the statute is as mentioned under Section 72A of the Finance Act, i.e. a Special Audit, to be conducted by a Chartered Accountant or a Cost Accountant. The Parliament thus, had a clear intention to provide for only a special audit. Accordingly, Rule 5A(2) of the Service Tax Rules cannot provide for a general audit of the assessee and is ultra vires the rule making power conferred under Section 94(1) of the Finance Act, 1994. In the past, the Hon'ble Calcutta High Court in the case of *"SKP Securities Limited vs. Union of India"* raised questions on the audit conducted by CAG.

The GST is now finding space in every discussion in which Hon'ble Finance Minister is taking part, which creates the impression that GST is now round the corner and we will see it coming in whatever form in year 2015. This is right time to gear up for GST.

The Central Government has notified 01.10.2014 as the date from which the amendment in the Negative List will be effective. Hence the area expanded in two services will be taxable from 01.10.2014. The provisions related to these services are discussed appropriately in Page 2.

There are several amendments in CENVAT Credit as well as in point of taxation impacting credit of input and input services. One should understand them in detail before taking credit. A detailed discussion has been provided on page-3.

The CAG has submitted their report on Service Tax to the President of India for the year 2012-13, which pointed out several issues requiring immediate attention of the Government. We understand it will surely help the Government in better compliance if taken in right spirit.

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 ending August 2014 (assessees other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th Sept., 2014
	E-payment	6th Sept., 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.		

Sale of space or time slot for advertisement

Existing clause (g) of Section 66D of the Finance Act, 1994:
(Applicable for the period 01.07.2012 to 30.09.2014)

"selling of space or time slots for advertisements other than advertisements broadcast by radio or television".

Hence, Service Tax was only leviable on sale of space or time for advertisements in broadcast media, namely, radio or television and sale of space or time for advertisements, other than in radio and television, were covered in the negative list. Thus, sale of space or time for advertisements in case of kiosks, hoardings, advertisements on internet, in ATM, etc., were not taxable.

New clause (g) of Section 66D of the Finance Act, 1994:
(Applicable w.e.f. 01.10.2014)

"selling of space for advertisements in print media".

The word "print media" is defined in clause (39a) of Section 65B of the Finance Act, 1994 as follows:

"print media means

i. book as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

ii. newspaper as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;"

Sub-section (1) of Section 1 of the Press and Registration of Books Act, 1867, defines the term "book" and the term "newspaper" as follows:

***"Book"** includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed.*

***"Newspapers"** means any printed periodical work containing public news or comments on public news.*

Implications:

Selling of space or time for advertisements on segments like:

- radio
- online and mobile advertising
- advertisements in internet websites
- out-of-home media
- on film screens in theatres
- Automated Teller Machines
- commercial publications
- business directories
- trade catalogues
- television
- bill boards
- buildings
- conveyances
- cell phones
- Tickets
- aerial advertising
- yellow pages

will be liable to service tax.

Transport of passengers by radio taxi/radio cab

Existing clause (o) of Section 66D of the Finance Act, 1994 :
"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;"

The definition of metered cab is provided in Section 65B(32) of the Finance Act 1994 as follows:

"metered cab means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder."

The Finance Act 2014 amended sub-clause (vi) of the above clause (o) of Section 66D by deleting the word *"radio taxi"*. Further, in the definition of 'metered cab', at the end the words *"but does not include radio taxi"* has been inserted.

Hence, services provided by radio taxi, irrespective of the fact whether these are air-conditioned or not, has been excluded from the negative list and definition of meter cabs making it taxable. These amendments will come into effect from 01.10.2014.

Moreover, following definition of radio taxi has been inserted as clause (za) in Mega Exemption Notification No.25/2012-ST :

"radio taxi means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS)"

Abatement Rates

The abatement of 60% which is presently available to renting of motor vehicle, would also be available to radio taxi service, subject to non-availment of credit of input, input services and capital goods.

Reverse Charge

Reverse charge which is applicable on Renting of Motor Vehicle designed to carry passenger will also cover the services provided by Radio Taxis and considering the complexity in finding the applicability, compliance will be a challenge for both the service providers and the receivers.

GST Updates

During the recent interactions, the Finance Minister Mr. Arun Jaitely has been very particular in emphasizing on the Govt's plan for rolling-out the much eluded GST. These constant talks circling around GST, sends out a very positive message to the whole fraternity who have many expectations in regards to its early implementation. Inspite of all such efforts by the Finance Ministry, the implementation of GST has been eluding since 2007 due to the failure of the Central Government to obtain the consent of the State Government. Of late, iniatives have been taken by the Finance Ministry, as several negotiations and discussion are being held between the Union and the State Finance Ministers. All such talks are being held with the intent to receive a mandate from the State Government for implementation of GST.

The Finance Minister in his recent visit to West Bengal, one of a handful of states that have expressed serious concerns on GST, met with Chief Minister Mamta Banerjee. In comments to reporters following the meeting, he said that he had received a letter with a list of requests from West Bengal, considered as ostensibly in exchange for support for Jaitley's GST agenda.

West Bengal is one of a number of states that Jaitley is looking to sway to push through legislation to introduce GST. Uttar Pradesh is wary about adopting tax changes that could potentially increase the burden on its businesses; Gujurat, home to many exporters, is concerned that it would lose out on substantial revenues; and Madhya Pradesh and Tamil Nadu have both expressed concerns about their fiscal autonomy being undermined.

The other issue relates to the inclusion or otherwise of the petroleum products and alcohol in the GST. The states were predominantly of the view that the petroleum and alcohol should be kept outside the purview of GST. However the Finance Minister during his recent interaction with the media person's shown his concern over keeping too many items out of the ambit of Goods & Service tax.

Moreover, possibilities of introductions of GST at Central level at the present also being discussed, if states don't come to concensssess.

Credit of Input Services

The recent amendments in CENVAT Credit as well as in Point of Taxation have modified the basic provision related to credit of input and input services. Changes have been made in Rule 4(7) of Cenvat Credit Rules, 2004 with regard to point of time, when one can avail the credit of input service recived by him including credit of service tax paid on input services under full and partial reverse charge.

This write up tries to discuss provisions related to credit of input services in following situations.

Full Reverse Charge (100% by receiver)

New Proviso to Rule 4(7) of Credit Rules effecting credit of Input Services under full reverse charge is provided here under:

"Provided that in respect of input service where whole of the service tax is liable to be paid by the recipient of service, credit shall be allowed after the service tax is paid:" (applicable w.e.f. 11.07.2014)

Therefore, the earlier condition of payment of invoice value to the service provider for availing credit of input services has been withdrawn. Henceforth, only on payment of service tax, the credit of input services shall available.

Partial Reverse Charge (50% or 75% by receiver)

New Proviso to Rule 4(7) of Credit Rules effecting credit of Input Services under partial reverse charge is provided here under:

"Provided further that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9:" (applicable w.e.f. 11.07.2014)

Therefore, the earlier condition of payment of invoice value to the service provider for availing credit of input services is continued in case of partial reverse charge. Hence, payment of service charge and service tax both are required for taking the credit of input services in case of partial reverse charge.

Normal Charge (100% by provider)

New Proviso to Rule 4(7) of Credit Rules effecting credit of Input Services under normal charge (tax payable by provider) is provided here under:

"Provided also that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9, except in respect of input service where the whole of the service tax is liable to be paid by the recipient of service, is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules :"

Therefore, the earlier condition of payment of invoice value to the service provider including service tax within 3 months of invoice date for availing credit on receipt of invoice, else reverse the credit after 3 month and take credit again on payment to service provider is continued in case of normal charge.

Time Limit for Input Services

New last Proviso to Rule 4(7) of Credit Rules effecting credit of Input Services applicable to all three situation above is provided here under:

"Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (1) of rule 9." (applicable w.e.f. 01.09.2014)

Presently there is no restriction with regards to time for availing the cenvat credit of input services by manufacturer or output service provider. However with effect from 01.09.2014 time limit of 6 months will be applicable for availment of CENVAT credit of input services by manufacturer or the provider of output service. Such credit shall not be taken after six months from the date of issue of invoice, bill or challan. This condition is applicable on input services irrespective of liabilty of payment of service tax.

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Recent Changes

New post created

The Finance Act 2014 created two new post of 'Principal Chief Commissioner' and 'Principal Commissioner' and same has been notified also. The exact placement of these post is awaiting reshuffling in the department.

(Notification No.16/2014-ST dated 06.08.2014)

New Exemption

Exemption provided to services provided by Kumaon Mandal Vikas Nigam Limited and 'Committee' or 'State Committee' as per Haj Committee Act, 2002 in respect of a religious pilgrimage facilitated by the Ministry of External Affairs of the Government of India, under bilateral agreement.

(Notification No.17/2014-ST dated 20.08.2014)

Rate of Exchange

For the purpose of "rate of exchange" new Rule 11 added to the Point of Taxation Rules, 2011 w.e.f. 01.10.2014 which is as under:

***"Determination of rate of exchange**– The rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when point of taxation arises in terms of the Point of Taxation Rules, 2011"*

(Notification No.18 & 19/2014-ST dated 25.08.2014)

Interest Rate on Refund

The central government has fixed 6% as rate of interest payable on refund of pre-deposits, payable under section 35FF of the Central Excise Act 1944.

(Notification No.24/2014-CE (N.T.) dated 12.08.2014)

Power to impose restriction

The service provider has also been included for the purpose of power to impose restriction in case of credit as per Rule 12AAA of CENVAT Credit Rules 2004.

(Notification No.25/2014-CE (N.T.) dated 25.08.2014)

Railway Certificate

Cenvat Credit of Service Tax on input service can now be taken on the basis of a Certificate in case of Transportation of goods by Rail Service, as per newly inserted clause to Rule 9(1) of Credit Rules which is produced here under:

"a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate"

(Notification No. 26/2014-CE (N.T.) dated 27.08.2014)

BOOK POST

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