Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 7 October 2014 ₹ 5/-

Editorial

Wishing all our readers a very Happy Durga Puja and Dussehra. We all look forward to this festive season of joyousness and merriment during which all of us get rejuvenated by different means.

We welcome Mr. Meeta Rama Rao, new Commissioner of Service Tax, Kolkata, and congratulate him on his promotion and posting to Service Tax, Kolkata. At the same time, notification regarding restructuring of Service Tax Kolkata Commissionerate has been issued and the present Commissionerate will be divided into Commissionerate - Kolkata I and Kolkata II. The restructured department will be effective from 15th October 2014. A lot of new officers will join during October on the implementation of the restructuring of Service Tax in Kolkata. According to the restructured department in Kolkata, Service Tax Zone will be created, which will be headed by the Chief Commissioner of Service tax Kolkata, under whom Principal Commissioner of Service Tax-I, Kolkata and Commissioner of Service Tax-II, Kolkata, along with Commissioner of Service Tax (Audit), Kolkata will function. The entire structure and jurisdiction has been discussed in a tabular form in Page 2.

Power has been delegated to the Chief Commissioner of Service Tax, Kolkata to decide the jurisdiction of the Commissioner of Central Excise (Appeals) or the Commissioner of Service Tax (Audit) or the Commissioner of Central Excise (Audit).The jurisdiction of these Commissioners will be known on or after the 15th October 2014, when someone will take charge of Service Tax Zone, as Chief Commissioner of Service Tax, Kolkata.

The CBEC issued a circular stating the guidelines regarding the structure, administrative set up and functions of Audit Commissionerates. However, the power to conduct audits of Service Tax assessees is still in question. Because, the Hon'ble Delhi High Court in a recent decision held that Service Tax laws doesn't contain provision for audit of assessees by departmental officers. Only time can tell how the CBEC will address this issue.

Further, a circular has been issued regarding the Service Tax applicability on transactions between a Joint Venture and its members which states that the same would be leviable to service tax after the introduction of Negative List Concept, except in a few cases, which will in effect have an adverse impact on the parties working under Joint Venture. This matter has been summarized in Page 2 of this issue. A few clarifications have also been issued by the CBEC via a circular, regarding the provisions about mandatory pre deposit under Section 35F of Central Excise Act, 1944 which we have discussed in Page 3.

Further, the answer to the question as to whether Cenvat Credit can be utilized for making mandatory pre-deposit under Section 35F has been provided through a circular issued by the CESTAT. The circular specified that, mandatory pre-deposit for filling appeal after 06.08.2014 can be made through Cenvat Credit. However, clarity on pre deposit of penalty is still awaited.

We highly seek suggestions/opinions from our 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 September 2014 (all assessees)	E-payment	6th Oct, 2014
Declaration	**Form**	**Due Date**
Half Yearly Declaration (Exemption to exporters)	EXP-2 (Physical)	15th Oct, 1014
* E-payment is mandatory for all assessees		

DUE DATES

Return	Form	Due Date
Return for the half year April 2014 to September 2014 (All assessees)	E-payment	6th Oct, 2014
Return for the quarter July 2014 to September 2014 (For a SEZ Unit or a Developer)	A-3 (Physical)	30th Oct, 2014

Joint Venture Transactions

The CBEC has recently issued a circular providing clarification regarding the applicability of service tax on services provided by the members to the Joint Venture and vice versa and services provided by the members to each other, i.e., provided inter se between the members, in the Negative List regime effective from 01.07.2012 under which all activities undertaken by any person are taxable, unless and until they are out of the scope of definition of the service or have been specified in the Negative List or have been exempted via an exemption notification.

Joint Venture and its members:

"An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons" – as provided by way of explanation to definition of Service in Section 65B(44) of the Finance Act, 1994.

So a Joint Venture and its members will be treated as distinct persons and therefore, taxable services provided for a consideration, by the Joint Venture to its members or vice versa and between the members are taxable.

Transactions between members or Joint Venture

- The circular has clarified that "Cash calls" are capital contributions made by the members to the Joint Venture. If cash calls are merely a transaction in money, they are excluded from the definition of service. Whether a 'cash call' is merely a transaction in money would depend on the terms of the Joint Venture Agreement, which may vary from case to case. Hence, a thorough and detailed scrutiny of the terms of Joint Venture agreement is required to determine the applicability of service tax on cash calls.
- Advance payments made by members to the Joint Venture towards taxable services to be received from it are taxable in the hands of Joint Venture such as in case the Joint Venture receives cash call from its members and in return agrees to do something of direct benefit either to the member or on the behest of a member to a third party, such as granting of right, reserving production capacity or providing an option on future supplies.
- Payments made out of cash calls pooled by a Joint Venture from its members towards taxable services received from a member or a third party are in the nature of consideration and hence attracts service tax.
- Consideration received, either in cash or kind, for managing cash calls (when such responsibility is assigned to one or more members by way of a contractual agreement) or for providing support services (e.g. administrative service in the form of setting up/management of a project office/site office) by a member to the Joint Venture will be liable to service tax.

Agreement of Joint Venture

Usually a Joint Venture being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV.

[Circular No. 179/5/2014 – ST dated 24.09.2014]

New Kolkata Service Tax Zone

(will be effective from 15th October, 2014)

CHIEF COMMISSIONER OF SERVICE TAX

Principal Commissioner of Service Tax-I, Kolkata	Commissioner of Service Tax-II, Kolkata	Commissioner of Service Tax (Audit), Kolkata
Jurisdiction Kolkata Municipal Corporation (KMC) Ward no. 1 to 62, the entire District of North 24 Parganas and entire District of Nadia in the State of West Bengal.	**Jurisdiction** Kolkata Municipal Corporation (KMC) Ward No. 63 to 141, entire district of South 24 Parganas and entire District of Howrah except blocks Amta-I, Amta-II, Bagnan-I, Jagatballavpur, Panchla, Udayanarayanpur, Domjur and Uluberia-II of Howrah District and entire District of Hooghly in the State of West Bengal.	**Jurisdiction** Expected to have, Jurisdiction of Principal Commissioner of Service Tax-I, Kolkata and Commissioner of Service Tax-II, Kolkata. Exact jurisdiction will be announced by Chief Commissioner of Service Tax, Kolkata.

- The jurisdiction of Commissioner of Central Excise, (Appeal – I) and (Appeal – II), Kolkata, will be announced by Chief Commissioner of Service Tax Kolkata Zone.
- The jurisdiction of Commissioner of Central Excise (Audit – I), (Audit – II) and Commissioner of Service Tax Audit will also be announced by Chief Commissioner of Service Tax Kolkata Zone.

[Notification No. 20/2014-ST and 21/2014-ST both dated 16.09.2014]

GST Updates

India's ambitious plans to reform the indirect tax regime through introduction of Goods and Services Tax (GST) took a few significant steps forward during last month when, Prime Minister, Mr. Narendra Modi met the Finance Minister to discuss and take a close view on the latest developments impacting the chances of rolling-out GST. The Finance Minister is hopeful that the constitutional Amendment Bill would be introduced in Parliament in the winter session.

Chief Minister of Madhya Pradesh, Mr Shivraj Singh Chouhan who, while addressing the media on the issue of GST has clarified that, *"We were never against GST. We have put forth our stand on a GST structure through which states were to face losses in state taxes. The (central) government will find a solution to that... There is no objection to it (GST)".*

Also, in order to provide a helping hand to the empowered committee of state finance ministers, the Finance Ministry has set up a GST cell headed by a joint secretary-level officer. This cell, which has officers from the Central Board of Excise and Customs (CBEC), will be the secretariat for empowered committee and will regulate the key bills through Parliament and monitor their subsequent progress through state legislatures. The setting up of the cell clearly shows that the ministry has now begun to take every necessary step which it could to introduce the much-awaited GST.

Mr. Narendra Modi has given directions to roll-out GST by April, 2016. Affirming to the direction of the Prime Minister, the Revenue Secretary of the Ministry of Finance, Mr. Shakti Kanta Das has said that, *"The deadline for actual implementation of GST from April 1, 2016, would be feasible. It all depend on how quickly we are able to reach consensus on critical issues".* Thus it is apparent that, as negotiations with states on GST enters a critical stage, the Centre is looking forward to implementation of the new indirect tax regime from April 1, 2016.

Clarification on Pre-deposit

The Finance Act (No.2), 2014 has prescribed mandatory pre-deposit of 7.5% in first stage appeal and 10% in second stage appeal. With a view to implement the provision smoothly, the following clarifications have been provided by the CBEC:

Pre-deposit for 2nd Stage appeal to Tribunal

There was confusion that if an appellant has already deposited 7.5% in first stage of appeal then the Appellant is required to deposit another 10% in second stage of appeal or differential 2.5% only. It has been clarified that in case of second stage appeal, 10% pre-deposit has to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). Therefore, it is understood it is in addition to 7.5% of pre-deposit already made in first stage appeal.

Pre-deposit in case of Penalty

Further in a case, where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, it has been clarified that the pre-deposit would be calculated based on the aggregate of all penalties imposed in the order against which appeal is proposed to be filed.

Payment made during investigation

Payment made during the course of investigation or audit, prior to the date on which appeal is filed, shall be considered for calculation of pre – deposit to the extent of 7.5% or 10% as the case may be. However, amounts paid over and above the 7.5% or 10% shall not be treated as pre-deposit. It is also clarified that the date of filing of appeal shall be deemed to be the date of deposit.

Recovery of amounts during the pendency of appeals

No Recovery proceedings of amounts shall be initiated during the pendency of appeals. Recovery of amounts over and above the pre-deposit can be initiated only after the disposal of the case when an order is passed by the appellate authority in favour of the Department.

Refund of pre-deposit:

In case appeal is decided in favour of the assessee, he shall be entitled to refund of amount deposited along with the interest from the date of pre-deposit to the date of refund.

Further, the refund of pre-deposit made by the assessee should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the assessee. The concerned Jurisdictional Commissioner should ensure that pre-deposit made for hearing the appeal should be refunded within the stipulated time of 15 days of the receipt of the letter seeking refund.

In the event of a remand, refund of the pre-deposit shall be payable along with interest. In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

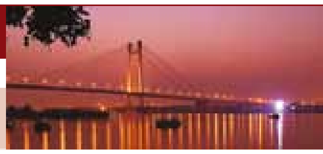
Procedure and Manner of making the pre-deposits

E-payment facility can be used by the appellants for making payment of pre-deposit, wherever possible. A self attested copy of the document showing satisfactory proof of payment shall be submitted before the appellate authority as proof of payment. It is to be noted that a copy of the appeal memo along with proof of deposit made shall be filed with the jurisdictional officers.

Procedure for refund

A letter from the person who has made such deposit, requesting for refund of the said amount, along with a self attested photo copy of the order in appeal or the CESTAT order and attested photo copy of the document evidencing payment of such deposit, addressed to Jurisdictional Assistant/ Deputy Commissioner of Central Excise and Service Tax or the Assistant/Deputy Commissioner of Customs, as the case may be, would suffice for refund.

[Circular No. 984/08/2014-CX dated 16th September, 2014]



FAQ

Q We have declared our tax dues under VCES, 2013 for 2011-12 and deposited 50% of the tax amount on 31.12.2013. Balance is still due. Since there is a change in the interest rates, what would be the interest rate applicable for us?

A The balance 50% of tax dues under VCES which remained un-paid on 30.06.2014 can be deposited within 31.12.2014 along with interest.

The new rates of interest for delayed payment of tax are notified (Notification No.12/2014-ST dated 11.07.2014) and applicable w.e.f. 01.10.2014 are 18% /24% /30% for delay upto 6 months/12 months/ more.

The interest rates vary to the extent of delay of period i.e. from the due date on which the said payment was to be made till the date of its actual payment. However, as per the VCES scheme the declarant should pay not less than 50% of the tax dues on or before 31.12.2013 and the part remaining thereof on or before 30.06.2014. Since the payment is to be made before 31.12.2014, the delay in payment from 30.06.2014 does not exceed six months. Therefore, the rate of interest applicable on such payments would be 18%.

Q We have started a new business of providing taxable service but have not reached a stage of raising invoices for such services. However, we have received invoices of certain input services. We understand that as per the amendment in Cenvat Credit Rules, 2004, we are not allowed to take Cenvat Credit after six months of the date of invoice. What should we do?

A Time limit for availing credit of input services has been provided by new proviso to Rule 4(7) of Cenvat Credit Rules, 2004 applicable w.e.f. 01.09.2014. The said proviso is as follows:

"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."

As per the above Rule, the time limit of 6 months is applicable for **availment** of Cenvat credit of input services by manufacturer or the provider of output service and not for its **utilization**. In your case, you should take (avail) credit of the same by recording it in the CENVAT Credit register and as no time limit has been prescribed for its utilization, it can be utilized indefinitely.

BOOK POST

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor
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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.