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INDIRECT TAX EXPRESS

FORTNIGHTLY e-NEWS LETTER FROM M/s D A V A & ASSOCIATES
Chartered Accountants

PART-A: FROM THE EDITOR

IMPORTANT POINTS RELATING TO FILLING & FILING OF SERVICE TAX RETURN (ST-3)

Service Tax Returns are required to be filed by all **Registered Service Providers** liable to pay service tax; persons liable to pay service tax as **Recipient of Service**; and **Input Service Distributor**. Service Tax Returns are to be filed in **Form ST-3**, **Half-Yearly**. The due date for filing of ST-3 Return is **25th of the month following the particular half year** (i.e., returns for the period April'2014 to September'2014 are to be filed by 25th October, 2014.) Where returns are filed after the due date, late fee is payable for delayed filing of return. The Late Fees payable may range from Rs.500/- upto a maximum of Rs.20000/- per return, depending upon the period of delay. Apart from late fee, penalty can also be levied under Section 77(2), for non-filing of return which can be upto Rs.10000/-.

ACES (Automation of Central Excise and Service tax), is a centralized web-based software application which automates various processes of Central Excise and Service Tax for assessees and department. The assessees can electronically file statutory returns of Service Tax by choosing one of the two facilities being offered by the department at present through ACES:

- Either file it online, or
- Download the off-line return utilities which can be filled up off-line and uploaded to the system through the internet.

Further, it has been clarified that wherever the returns are submitted through ACES, there will not be any requirement to submit signed hard copy separately.

Online Preparation and Submission of ST-3 Return

- Returns can be prepared and filed online by selecting "File Return" option under RET module after logging into the ACES.
- All validations are thrown up during the preparation of the return in this mode and the status of the return filed using the online mode is instantly shown by ACES.
- In this case, the ACES application software acknowledges it by displaying an Acknowledgement message. This is also automatically communicated to the email id of the assessee by the application.

WHAT'S NEW

➢ CBEC, vide Notification Nos. 20-22/2014-ST, all dated 16.10.2014 has notified jurisdiction of various Service Tax Commissionerates all over India.

➢ In view of the recent judgment of Delhi High Court in Travelite India case, CBEC Vide Circular No. 986/10/2014-CX, dated 09.10.2014, clarified that since in Central Excise there is adequate statutory backing for audit by the Central Excise Officers, they shall continue to conduct audit.

➢ CBEC, vide Circular No. 984/08/2014-CX, dated 16.09.2014, has clarified the procedure and manner of making the pre-deposits and various other issues relating to implementation of the amended provisions of Section 35F of Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 in the matter of appeal before Commissioner (Appeals) and CESTAT.

➢ CBEC vide Circular No. 180/06/2014–ST dated 14.10.2014 has clarified that service tax is applicable on commission paid to Indian agents by foreign institutions in relation to inward money transfer services.

As the festival of light is about to come, drop all the worries and fears and replace them with delightness and joy. An occasion to celebrate victory over defeat, Light over darkness, awareness over ignorance..... An occasion to celebrate life. Team Indirect Tax Express wishes all its readers a Shubh Deepavali!!

Offline Preparation by Downloading Return Utilities

- Assessee can download the Offline return preparation utility available at http://www.aces.gov.in (under Download).
- This return preparation utility contains preliminary validations which are thrown up by the utility from time to time.
- After all the required fields have been filled properly and validated, "Validate Return and Generate xml" button will recheck all the sheets and XML will be generated.
- Then the assessee will have to login using the User ID and Password.
- RET menu is to be selected from the main menu and upload the generated XML file of return. On upload, screen provides the required information; browse to select the XML file and submit the form.
- The status can be viewed by the assessees under the "View Status" link under RET module. If return is accepted by the system, status will be shown as 'Filed'.

Common Errors while Filing Returns

- The error message "The login information is wrong. Please try again. Your password will be blocked after 5 attempts" appears when assessee user-name or password is not entered correctly.
- When the assessee registration details are not properly migrated into ACES from the existing database, the error message "You are not a valid migrated user" appears.
- Mismatch in the selection of return type (original/revised) in excel utility and that selected at the time of uploading the return. This will lead to rejection of the return.
- Wrong rates of tax entered in the offline utility may lead to rejection of the return.
- Incorrect registration number or wrong selection of constitution or wrong category of registrant will lead to rejection of return.
- Amount entered in the return for a given challan higher than the amount actually deposited against the said challan will lead to rejection of return.
- Difference in the amount shown as paid by CENVAT in Paid section and that entered in CENVAT section will lead to return not being validated.
- Amount shown as paid in cash higher than the amounts mentioned in the challan will throw an error while validating the return utility.
- Service Tax payable higher than amount shown in Paid section even by Re.1 (arising mainly due to rounding off differences) will throw an error while validating the return utility.

The assessees are also allowed to rectify the mistakes and file **Revised Return** within 90 days from the date of filing of the original return. If mistake comes to notice after 90 days, there is no provision of submission of revised return. Service tax is a complex levy and service tax return format reflects it clearly. Further, there are some disclosure issues also. For example there are issues with respect to disclosure of liability under reverse charge, payment of late fee, liability on import of services, disclosure of liability for service providers paying service tax on cash basis etc. So due care has to be exercised while filing service tax return.

PART-B: QUIZ TIME!!

1. What is the turnover limit for individuals and partnership firms for payment of service tax on receipt basis at the option of service provider?

2. On what percentage of taxable value is the service receiver liable to pay service tax under reverse charge on sponsorship services?

3. What is the turnover limit for audit under WB VAT Act for registered dealers (other than those registered under the Companies Act, 1956) for FY 2013-14?

(Please mail your replies with your name and mail id to *davaidtexpress@gmail.com)*

(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **9th July'04**

Reply to **Q2 – Year 1986**

Reply to Q3–**Rs. 410 crores (approx.)**

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SOME COMMON LEGAL MAXIMS AND THEIR USE

- ***Bonafide*** –In good faith. E.g.- The directors are subject to act *bonafide* for benefit of the company as a whole.
- ***Prima facie*** –At first face. E.g.- Forged documents are *prima facie* evidence of the crimes of bank fraud.

PART-C: CASE UPDATES

1. <u>Sadguru Construction Co. VS Union of India [2014(36) STR 3, Gujarat]</u>

Issue: The petitioner has deposited the disputed amount of Service Tax with the department after 1.3.2013 but before 10.5.2013, the date on which VCES Scheme was framed to avail the Immunity from penalty & interest. Whether it would form a part of the declaration since the amount was received before 10.5.2013?

Decision: The Hon'ble High Court held that for a valid declaration, the proceedings for either declaration or recovery of tax dues should not be pending on 1.3.2013 and secondly, the tax should not have been deposited before the said date. In the present case, both the conditions were fulfilled. Therefore, the period between 1.3.2013 and 10.5.2013 would, by necessary application of provision of the scheme, be covered for declaration under the scheme itself. Moreover, as circular cannot override statutory provisions, it was also held that Department cannot rely on the CBEC Circular No.170/5/2013-S.T. stating, *if any "tax dues" have been paid prior to the enactment of the scheme, any liability of interest or penalty thereon, shall be adjudicated.*

2. <u>Infinity InfoTech Parks Ltd. VS Union of India [2014(36) STR 37, Calcutta]</u>

Issue: Whether CERA Team of office of Comptroller and Auditor General of India had power to conduct audit of private assessees under the provisions of service tax law?

Decision: The Hon'ble High Court of Kolkata held that it is a well settled principal of interpretation that any statutory rules must be constructed in harmony with the rule making power, in exercise of which the statutory rule has been made. There is no provision in Chapter V of the finance act, 1994, or for that matter in the CAG Act which empowers the CAG to audit the accounts of an assessee which is a non-government company, not in receipt of aid or assistance from any government or government entity. Sub-section (2) of the section 94 also does not empower the central government to frame rules for audit of the accounts of an assessee by any audit team under the comptroller and auditor general of India. There can be no doubt that the statutory rules, framed in exercise of power conferred by statute cannot introduce something not contemplated in the statute, from which it derives its rule making power. Therefore, the report on which the commissioner of service tax acted, is itself appearing illegal. and unsustainable.

Indirect tax collections inched up by 5.8 percent in the April-September period of this fiscal. Indirect tax collections, comprising excise, customs and service tax, stood at Rs 2,41,811 crore in the first six months of 2014-15 fiscal as against Rs 2,28,619crore in the corresponding period a year ago.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: M/s. XYZ Ltd. is an Indian event management company, which provides service of event management to an Indian customer in Bangkok i.e. a non- taxable territory. Payment is received by the event management company in Indian currency from the customer in India. Whether service tax is applicable in the present case?

Reply by E-News Letter Team: According to rule 6 of Place of Provision, 2012, in case of event management service, the place of provision is the place where such event is organised. In the present case event is organised in Bangkok which is a non-taxable territory. By application of this rule, service is not taxable in India. However, as per Rule 8, when both service provider and service receiver are located in taxable territory, place of provision of service will be in the taxable territory. In accordance with rule14, the rule that occurs later will be applied among the rules which merit equal consideration. Therefore, in the present case by application of rule 8 read with rule 14, service is taxable in India.

Query 2: Whether Service Tax is applicable on displaying of advertisement or sign -board etc?

Reply by E-News Letter Team: Selling of space or time slots for advertisements other than advertisement broadcast by radio or television was covered under negative list by entry no. (g) w.e.f 01.07.2012. However, the existing clause was substituted by *"selling of space for advertisements in print media."* by the Finance Act, 2014, effective from 1st October, 2014.

Thus, in effect, online and mobile advertising, advertisements in internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, Automated Teller Machines, tickets, commercial publications, aerial advertising, etc. which were not taxable from 01.07.2012 to 30.09.2014 are taxable from 1st October, 2014 onwards.

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