POINT OF TAXATION RULES, 2011

Point of Taxation Rules was applicable w. e.f 1st April, 2011. These rules were introduced to convert the service tax payment system from 'payment basis' to 'accrual basis'. Before 1st April 2011, the Input of service tax can be claimed only after making the payment and similarly the service tax payment liability arise only after receiving the payment. This will increase the accounting work and complexity in maintaining the records. Further this system is not consistent with the excise and VAT laws. To bring the consistency among the various laws and to facilitate the implementation of GST the Point of Taxation rules were introduced. The brief the applicable rules as on date is as under:-

Rule 1	:	Short title and Commencement.
Rule 2	:	Definitions
Rule 2A	:	Date of payment
Rule 3	:	Determination of point of taxation
Rule 4	:	Determination of point of taxation in case of change of rate of tax
Rule 5	:	Payment of tax in cases of new services
Rule 6	:	Omitted
Rule 7	:	Determination of point of taxation in case of specified services or persons
Rule 8	:	Determination of point of taxation in case of copyrights, etc
Rule 8A	:	Determination of point of taxation in other cases.
Rule 9	:	Transitional Provisions
Rule 10	:	Notwithstanding anything contained in the first proviso to rule 7

Relaxation not to follow the Rules:- As per Rule 6(1) of service tax rules (w.e.f. 01st April, 2012) the option is provided to **Individual & Partnership firm including LLP whose total value of taxable services from all the premises together is Rs. 50 lakhs or less** in the Previous financial year can pay service tax on received basis instead of accrual basis.

Claim of Input Cenvat Credit :- Rule 4(7) of Cenvat Credit Rules has been amended w.e.f. 1st April, 2011 to Claim the Input Cenvat Credit immediately on receipt of invoices except where the service tax is payable under reverse charge mechanism basis. However where the payment for services not made within **three month** from the date of receipt of invoice, the service tax input credit has to be revered. The Input credit can be taken again after making the payment. Further the department has clarified through its circular the Input Cenvat Credit can be claimed immediately on receipt of invoice even for specified person i.e. who are paying tax on receipt basis instead of payment basis.

Treatment of bad debts , discounts etc :- Before implementation of these rules the payment of service tax is required to be done only on payment basis. Thus, if the payment was not received by the service provider due to bad debts or any other reason, the service provider is not required to make such service tax payment. However with the implementation of these rules the benefit of bad debts or simple discount could not be taken by the service provider.

Rule 6(3) of Service tax Rules provides that if (i) Service not provided fully or partly for any reason or (ii) where amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, assessee can (a) refund the amount to the service receiver with service tax or (b) issue a credit note to service receiver.

Thus the adjustment on the ground of bad debts or giving simple discount or reduction in charges are not possible. Renegotiation of invoice due to deficient provision or due to the terms and conditions of contract is allowable.

Determination of Point of Taxation:-

Practically most of the cases is dealt by the Rules 3 of POTR 2011. It is a general rule for deciding the point of taxation. It also applies in case of continuous supply of services. As per this rule the point is taxation is the **earlier** of following conditions

(1) Time when the invoice for the service provided or to be provided is issued [provided that where the invoice is not issued within the time period specified in Rule 4A (presently 30 days) of the service tax Rules 1994, the Point of taxation shall be the date of completion of provision of the Service]

OR

(2) The time of receiving the payment

Thus the point of taxation is the earlier of receipt or issue of invoice whichever is earlier. The special cases are dealt by rule 4 to rule 8A of point of taxation rules. The summarized rules with most of the possible conditions are given below in the table.

SUMMARY OF POINT OF TAXATION IN DIFFERENT CASES.

POINT OF TAXATION RULES				
S. No.	**PARTICULARS**	**Section/Rules**	**POINT OF TAXATION**	**CONDITIONS**
1.	Relaxation for Individual & Partnership firm having taxable value of services is Rs 50 lacs or less	Rule 6(1) of Service tax Rules (w.e.f. 1st apr, 2012)	Option to pay tax on received basis instead of accrual basis.	HUF is not covered under this relaxation
2.	Input Tax Credit	Rules 4(7) of Cenvat Credit Rules	Input can be immediately taken on receipt of invoice (except in case of Reverse Charge mechanism)	The payment against services has be made within three month otherwise the input has to be reversed.
3.	Normal Situation (not covered under Rules 4 to 9)	Rule 3 (a) & (b) of POTR	Receipt of advance or date of issue of invoice whichever is earlier	Invoice should be issued within prescribed time(30 days) as per Rule 4A of service tax rules 1994 otherwise POT is date of Completion of provision of services
4.	Continuous Supply of Services (telecommunication service & Service portion in execution of a work contract is notified continuous supply services)	Proviso to 3 of POTR	Date of invoice or date of receiving of advance whichever is earlier	Invoice should be issued within 30 days of date of completion of service otherwise POT is date of completion of provision of services
5.	Taxable Service provided before change in effective rate of service tax	Rule 4(a) of POTR	Date of issue of Invoice or Date of received of payment whichever is earlier	
6.	Taxable service provided after change in effective rate of service tax	Rule 4(b) of POTR	Where the issue of invoice and payment is made both before change in effective rate of tax, POT is date of invoice or date of payment whichever is earlier otherwise the date of payment of date of issue of invoice whichever is later	

7.	New Service brought under service tax net	Rule 5 and Rule 3 of POTR	Where the invoice is issued within 14 days when the service is taxed for the first time, No service tax is payable	
8.	Service tax under Export of Services	Rule 3(1) of Export of service Rules	Date on which payment is received	
9.	Service under reverse charge mechanism	Rule 7 of POTR	POT is date of payment if the payment is made with in 6 month from the date of invoice otherwise the POT will be determine as this rule is not exist	POT will be the date immediately after 3 month from date of issue of invoice (amendment w.e.f.01-10-2014)
10.	Service received from associated enterprise when service provider outside india	Rule 7 of POTR	Date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier	
11.	Service tax in case of Copy write etc	Rule 8 of POTR	Date of receipt of payment or the date of benefits is received by the provider or date of invoice whichever is earlier	Where the whole amount of consideration for the provision of service is not ascertainable at the time when service was performed
12.	Best judgement assessment (if cannot be determined on any of above basis	Rule 8 A of POTR	To be determined by Excise officer after giving opportunity of being heard	

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