WHETHER SMALL SERVICE PROVIDERS ARE REQUIRED TO FILE SERVICE TAX RETURN

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We all are well familiar with the ever green contest between the Revenue and the Assessee, be it a taxing issue or an issue of relief. The learned officials of the Department are issuing Show Cause Notices to the Small Service Providers of non-filling of Service Tax Returns. My point of consideration in this discussion is whether Small Service Providers having turnover below the threshold limit Rs. 10 Lacs and also below Rs. 9 Lacs (the limit prescribed for obtaining registration even if the turnover is below the threshold limit) are at all required to file the service tax return?

In my considered opinion, the Service Providers having taxable turnover less than the threshold limit Rs. 10 Lacs, and also less than the prescribed limit Rs. 9 Lacs who otherwise comply with the conditions of exemption notification are not required to file the service tax return.

Only the following four types of persons are required to file the Service Tax Returns

1. 'Persons liable to pay tax
2. 'Input Service Distributors
3. 'Small Service Providers whose aggregate value of taxable service exceeds a prescribed amount, (then Rs. 3 Lacs, now it is Rs. 9 Lacs)
4. 'the service recipients wherever liable to pay service tax on reverse charge basis.

Who is liable to file service tax return?

Liability to file return is on the persons who are liable to pay tax or who have otherwise been specifically made liable to obtain registration and file service tax returns.

Liability to file Service Tax Return is cast upon the Person Liable to Pay the Service Tax vide Section 70 and Rule 7(1).

Liability to obtain compulsory registration and filling of service tax return is determined by Section 69(2), Section 70(2) and Notification No. 26/2005 as amended up to the date.

For ready reference, relevant provisions of Section 70(1), Rule 7(1), Section 70(2) and Section 69(2) are reproduced here:

Section 70(1) of the Act;

Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.

Rule 7(1) of the Service Tax Rules, 1994;

Every Assessee shall submit a half yearly return in Form ST-3 or ST-3A, as the case may be, along with a copy of the Form TR-6, in triplicate for the moths covered in the half-yearly return.

Section 70 (2) of the Act

The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

Section 69(2) , Persons notified for filling of service tax return

The Central Government, exercising the powers conferred under Section 69(2), issued a Notification bearing No. 26/2005-ST on 7-6-2005 specifying that;

any input service distributor

and

service provider of taxable service whose aggregate value of taxable service in a financial year exceeds Three Lacs Rupees to make an application for Registration.

Turnover limit for obtaining Service Tax Registration was raised from Rs. 3 Lacs to Rs. 7 lacs and Rs. 9 Lacs respectively by subsequent amendment notification to the original 26/2005 by notification nos. 05/2007 dated 01-03-2007 effective from 01-04-2007 and 9/2008 dated 01-03-2008 effective from 01-04-2008.

This Notification made it incumbent upon every input service distributor and every provider of Taxable Service with its turnover of more than Rs. 3 Lacs Rupees (now Rs. 9 Lacs) to obtain registration under the Act, even if he/she is not otherwise liable to pay Service Tax (the Turnover of Taxable Service being less than Rupees 4 Lacs, now Rs. 9 Lacs).

A. Thus as per Section 70(1) and Rule 7, every person liable to pay tax / every 'Assessee' shall submit a half-yearly return.

B. And as per Section 69(2) and Section 70 (2) read with relevant notification 26/2005, every input service distributor and persons having turnover more than the prescribed limit shall submit a half-yearly return.

Legal position regarding Input Service Distributors and Small service providers required to obtain Service Tax Registration because of having turnover of more than the prescribed limit of Rs. 9 Lacs as per B. being clear;

We will now concentrate on 'Persons liable to pay tax' discussed in point A. above.

Every person liable to pay tax / every 'Assessee' shall submit a half-yearly return, let us discuss, who is person liable to pay tax/Assessee?

The term 'Assessee' has been defined in Section 65 (7) of the Act as under:-

Section 65(7) of the Act;

"Assessee" means a person liable to the service tax and includes his agent.

So a person liable to pay the service tax is Assessee.

Section 68(1)

provides that every person providing taxable service to any person shall pay service tax at the rate specified in Section 66/Section 66B in such manner and within such period as may be prescribed. (prior to 01-06-2012, read Section 66 and thereafter Section 66 B)

Section 66.

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent of the value of taxable services referred to in sub-clauses (a).. to… (zzzzw) of clause (105) of section 65 and collected in such manner as may be prescribed.

Section 66B.

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

So Section 66 / Section 66B stipulates that service tax shall be levied at the rate of twelve percent OF THE VALUE OF TAXABLE SERVICES.

Service Tax Notification No. 6-ST dated 1-3-2005, applicable w.e.f. 01.04.2005 came as a great measure to unburden small service providers. This notification was issued by the Central Government in exercise of the powers conferred by Section 93(1) that empowers the Central Government to exempt generally or subject to conditions, any taxable service from WHOLE or ANY PART of the Service Tax leviable thereon.

The above notification exempted all taxable services of aggregate value not exceeding Four Lacs Rupees in any financial year from WHOLE of the Service Tax leviable there on u/s 66 of the Act. It also laid down certain conditions subject to which this exemption is available. Thereafter the threshold exemption limit was raised to Rs. 8 Lacs and Rs. 10 Lacs respectively by subsequent amendment notification to the original notification 06/2005 by notification nos. 04/2007 dated 01-04-2007 and 08/2008 Dated 01-04-2008..

As Notification No. 6/2005-ST as amended up to date exempts taxable services of aggregate value not exceeding Ten Lacs Rupees in any financial year from WHOLE of the Service Tax leviable there on u/s 66 or 66B of the Act, subject to the provisions of the Notification.

Thus charge of Service Tax on the first Ten Lacs Rupees is not created because the aggregate value of first Ten Lac Rupees in any financial year is EXEMPT from WHOLE of the Service Tax and the concerned person shall not be liable to pay Rule 7C was amended subsequent to the above clarification vide notification number 04/2008 dated 01.03.2008 by inserting second proviso to Rule 7C as;

"Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty."

Though, Penalty/Late Fee' is liable to be paid even in case NIL return is not filed, we shall forthwith discuss that it applies in case the person's taxable turnover exceeds the threshold limit, or he is otherwise liable to file return by virtue of Section 69(2) or on reverse charge basis, which are required to file even NIL return.

In case of such turnover being below the threshold limit the persons are not at all required to file the service tax return at all.

Rule 7C was amended subsequent w.e.f. 01.03.2008, that falls subsequent to above clarification dated 29.03.2007, even then it does not override that clarification and does not affect the legal position because liability to file Service Tax Return is cast upon the Person Liable to Pay the Service Tax. Rule 7C provides for amount to be paid in case of delay in furnishing of Service Tax Return, if such Return was otherwise required to be filed by virtue of Rule 7.

Rule 7C start with the words

'Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return the person liable to furnish the said return shall pay to the credit of Central Government for the period of day an amount…….'

The above words hold utmost importance and clearly indicate that amount for delayed filling of service tax return shall be payable only in case, the return prescribed under Rule 7 is submitted late.

Likewise, Second Proviso to Rule 7C empowers the Superintendent to waive or reduce the penalty if it is otherwise payable under Rule 7C. Thus this proviso is applicable only in case, the late fee is otherwise payable for delayed filling by the person otherwise liable to file service tax return.

Text of Rule 7C of the Service Tax Rules, 1994

Where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-

(i) Fifteen days from the date prescribed for submission of such return, an amount of five hundred rupees;

(ii) Beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and

(iii) Beyond thirty days from the date prescribed for submission of such return an amount of one thousand rupees plus one hundred rupees for every day from the thirty first day till the date of furnishing the said return:

So, Second Proviso to Rule 7C, is aimed at providing relief to the persons who are otherwise liable to file service tax return but for the particular return period the gross amount of service tax payable for a return period is NIL. Persons having turnover less than the threshold limit and otherwise complying with the exemption notification are not at all liable to pay tax, and consequently not at all liable to file the service tax return so the question of late fee and consequent relief under Rule 7C does not arise at all.

A case of NIL return may arise in many cases, for instance e.g.

*for the particular return period the gross amount of service tax payable for a return period is NIL , though for the subsequent or a previous return period during the same year, the service tax may be payable;

*A person having taxable turnover below the threshold limit but having taxable turnover more than limit prescribed for obtaining service tax registration (presently, Rs. 9 Lacs) does not have tax liability but is required to file return with service tax liability as nil

*A person having gross amount of service tax payable to be NIL because of CENVAT credit being more than the Output Service Tax Liability.

Recent Development

Central Board of Customs and Excise has recently issued a Clarification Circular No. 170/5 /2013 – ST dated 08-08-2013 on The Service Tax Voluntary Compliance Encouragement Scheme, 2013, giving a clarification relating to penalty for non-filling of service tax returns has been given at Serial Number 7 of the said Circular;

Issue

Whether a person, who has paid service tax for a particular period but failed to file return, can take the benefit of VCES Scheme so as to avoid payment of penalty for non- filing of return?

Clarification

Under VCES a declaration can be made only in respect of "tax dues".

A case where no tax is pending, but return has not been filed, does not come under the ambit of the Scheme.

However, rule 7C of the Service Tax Rules provides for waiver of penalty in deserving cases where return has not been filed and, in such cases, the assessee may seek relief under rule 7C.

It is to be noted that persons having turnover less than the threshold limit and otherwise complying with the exemption notification are not at all liable to pay tax, and consequently not at all liable to file the service tax return so the question of late fee and consequent relief Voluntary Compliance Encouragement Scheme, 2013 also does not arise at all. The circular clarifies that the relief under the scheme is not available rather benefit of Rule 7C is available where the return is otherwise required to be filed.

For example, a person having taxable turnover below the threshold limit but having taxable turnover more than limit prescribed for obtaining service tax registration (presently, Rs. 9 Lacs) does not file return with service tax liability as nil, or net tax liability of a person due to available CENVAT is nil but he/she files late return.

Conclusion

We may safely conclude that, if liability of payment of Service Tax does not arise at all because of the taxable turnover of a person is less than the threshold limit; Service Tax Return is not required to be filed. It is to be noted that persons required to obtain compulsory registration after crossing prescribed limit (Rs. 9 Lacs presently), persons being Input Service Distributors and persons liable to pay tax on reverse charge basis shall be liable to file service tax return.

Legislative History on the issue of filling of returns by Assessees below the threshold exemption limit

Reference	Subject Matter	Comments
Clarification Notification bearing F.No.B1/ 6 /2005-TRU dated 27-07-2005	it has been clarified that subsequent to amendments to Section 69 and Section 70, three types of persons are now required to file the Service Tax Returns 1. 'Persons liable to pay service tax 2. 'Input Service Distributors 3. 'Small Service Providers whose aggregate value of taxable service exceeds a prescribed amount, (then Rs. 3 Lacs, now it is Rs. 9 Lacs)	
On 29-03-2007, an Instruction Letter – ST bearing F. No. 137/58/ 2007-CX.4 was issued by with the Subject 'Dropping of Show Cause Notices for non-filling of returns by Assessees under threshold limit'	"The issue has been examined. The service tax return is required to be filled under Section 70 of the Finance Act, 1994 by "Every person liable to pay the service tax". Similarly, as per Rule 7 of the Service Tax Rules, 1994, "Every assessee" is required to submit service tax return. By definition, an "assessee" is a person liable to pay service tax. Thus, it can be concluded that for persons, who are not liable to pay service tax (because of the exemption) are also not required to file ST-3 returns. Pending show-cause notices may be disposed of taking into consideration the view as above. "	Clarification by Central Board of Excise and Customs also clarifies that persons, who are not liable to pay service tax (because of the exemption) are also not required to file ST-3 returns.
'Frequently Asked Questions on Service Tax' issued by Director General of Service Tax published in November, 2007	**Question 4.8** Is filing of return compulsory even if no taxable service provided or received or no Payments received during a period (a particular half year)? **Answer** Filing of return is compulsory, even if it may be a nil return, within the prescribed time limit, failing which penal action is attracted.	It has been categorically clarified in the Disclaimer to these FAQs that The provisions of the Finance Act 1994, rules made there under, notifications and circulars or instructions of the Board shall prevail over the answers provided in this booklet in case of any contradiction and for complete Information please refer to the Finance Act, 1994, rules made there under and notifications and circulars. Applicable in case, where the person otherwise liable to file service tax return.
Second proviso to Rule 7C (that provides for amount to be paid in case of delay in furnishing of Service Tax Return) applicable w.e.f. 01-03-2008	Rule 7C provides for amount to be paid in case of delay in filling service tax return, the second proviso reads as; "Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty."	Rule 7 requires a person liable to pay service tax to file the service tax return. Rule 7C calls for late fee in case the Service Return is otherwise required to be filed in terms of Rule 7 It does not even override clarification of CBEC issued on 29-03-2007 on the subject, 'Dropping of Show Cause Notices for non-filling of returns by Assessees under threshold limit' as that clarification was in respect of persons having turnover below the threshold limit. That clarification makes it clear that persons below the threshold limit are not at all required to file the service tax returns A case of NIL return may arise for those persons with turnover more than threshold limit for instance e.g. but *for the particular return period the gross amount of service tax payable for a return period is NIL *A person having taxable turnover below the threshold limit but having taxable turnover more than limit prescribed for obtaining service tax registration (presently, Rs. 9 Lacs) does not have tax liability but is required to file return with service tax liability as nil *A person having gross amount of service tax payable to be NIL because of CENVAT credit being more than the Output Service Tax.
Sixth Edition of 'Frequently Asked Questions on Service Tax' dated 16-09-2011 by Director General of Service Tax	Question 4.9 Is filing of return compulsory even if no taxable service provided or received or no payments received during a period (a particular half year)? Answer; Filing of return within the prescribed time limit is compulsory, even if it may be a nil return, failing which penal action is attracted.	It has been categorically clarified in the Disclaimer to these FAQs that The provisions of the Finance Act 1994, rules made there under, notifications and circulars or instructions of the Board shall prevail over the answers provided in this booklet in case of any contradiction and for complete Information please refer to the Finance Act, 1994, rules made there under and notifications and circulars. Applicable in case, where the person otherwise liable to file service tax return.