# Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 8 November 2014 ₹ 5/-


## Editorial

Happy Diwali everyone!! We wish that the divine Light of Diwali spread into your life and bring Peace, Prosperity, Happiness and Good Health. Let this Diwali lights burn all your bad times and enter you in good times.

The Central Government by an order dated 24.10.2014 extended the due date of filing of Service Tax Return for the period April'14-September'14 from 25.10.2014 to 14.11.2014. This was surely a last minute belated Diwali gift offered to the assessees by the CBEC. However, had this extension of due date been granted earlier, its importance and relevance would have been doubled.

The Service Tax Zone, Kolkata has been restructured w.e.f. 15.10.2014. The new restructured department will now have 70 ranges (2 Commissionerate with 7 divisions each with every division consisting of 5 ranges) instead of 72 ranges earlier (3 divisions each consisting of 24 ranges). The restructured department will take some more time to become fully operative. Till that time, assessees will have to bear the transitional phase due to such restructuring. The new divisions as an effect of such restructuring have been notified and a list of the same has been provided on Page 2 of this issue.

In the context of formulating the proposals for the Union Budget of 2015-16, the Ministry of Finance vide letter F. No. 344/20/2014-TRU dated 27.10.2014 has invited suggestions and views of the Trade and Industry Associations for changes in the duty structure, rates and broadening of tax base on both direct and indirect taxes giving economic justification for the same. Suggestions and views may be supplemented and justified by relevant statistical information about production, prices, revenue implication of the changes suggested and any other information to support the proposal.

The Hon'ble CESTAT vide its Circular F. No. 15/CESTAT/General/2013-2014 dated 14.10.2014 has clarified that the mandatory pre-deposit of 7.5%/ 10% in case of first and second stage appeal respectively, as the case may be, has to be made for filing an appeal before the CESTAT even when Show Cause Notice was issued and demand was confirmed prior to 06.08.2014.

A number of changes had been made by the Budget 2014. One significant change is regarding Commission Agents providing services across borders. The definition of 'Intermediary' has been changed. One must understand the issue and its impact on them of this change.

Further, a clarification has been issued to thoroughly explain and remove any confusions and vagueness regarding the scope of the definition of "Place of Removal" which has been discussed in Page 2. Also, the recent circular regarding service tax leviability on activities involved in inward remittances from abroad to beneficiaries in India through MTSOs has been provided in Page 3.

We seek suggestions/opinions from our readers. Please feel free to mail the same at servicetaxgoyal@gmail.com.

CA Sushil Kr Goyal

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### DUE DATES

| Payment | Form | Due Date |
|---|---|---|
| Payment for Month ending October 2014 (assessees other than individual, proprietorship firm, partnership firm and LLP) | E-payment | 6th Nov, 2014 |
| * E-payment is mandatory for all assesses with effect from 1st Oct, 2014. | | |

### DUE DATES

| Return | Form | Due Date |
|---|---|---|
| Return for the half year April 2014 to September 2014 (All assessees) | ST-3 | 14th Nov, 2014 |
| Half Yearly Return for the period April 2014 - September 2014 (with a late fees of Rs.500/-) | ST-3 | 29th Nov, 2014 |

# Determination of Place of Removal

The CBEC has found/noticed that on the basis of the claims of the manufacturer regarding freight charges or who bore the risk of insurance, the place of removal was decided without ascertaining the place where transfer of property in goods has taken place. Hence a clarification has been issued by the board regarding the determination of "place of removal".

The definition of "place of removal" has been inserted as Rule 2(qa) to the Cenvat Credit Rules, 2004 via Notification No. 21/2014 – CE dated 11.07.2014 as per which for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because of certain terms of the sale contract/agreement. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods is in terms of the provisions under the Sale of Goods Act, 1930.

The time when property in goods is transferred from the buyer to the seller in the Sale of Goods Act, 1930 has been produced hereunder:

*"Section 19 of the Sale of Goods Act provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention of the parties are to be ascertained with reference to the terms of the contract, the conduct of the parties and the circumstances of the case. Unless a different intention appears; the rules contained in Sections 20 to 24 are provisions for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 23 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied and may be given either before or after the appropriation is made. Sub-section (2) of Section 23 further provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purposes of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract."*

It is reiterated that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. **The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.**

*[Circular No. 988/12/2014-CX dated 20.10.2014]*

## Service Tax Zone (Kolkata)

Service Tax Kolkata – I, Commissionerate

| | Division Name | Jurisdiction |
|---|---|---|
| 1. | Shyambazar | KMC Ward No. 1 to 25 |
| 2. | Burrabazar | KMC Ward No. 26 to 40 |
| 3. | BBD Bag I | KMC Ward No. 41 to 45 |
| 4. | BBD Bag II | KMC Ward No. 46 to 50 |
| 5. | Chowringhee I | KMC Ward No. 51 to 57 |
| 6. | Chowringhee II | KMC Ward No. 58 to 62 |
| 7. | North 24 Parganas & Nadia Division | Entire district of North 24 Parganas and Nadia in the State of West Bengal. |

Service Tax Kolkata – II, Commissionerate

| | Division Name | Jurisdiction |
|---|---|---|
| 1. | Park Street | KMC Ward No. 63 |
| 2. | Ballygunge | KMC Ward No. 64 to 81 except 80 |
| 3. | Rashbehari | KMC Ward No. 82 to 88 |
| 4. | Tollygunge | KMC Ward No. 89 to 114 |
| 5. | Behala | KMC Ward No. 80 and 115 to 141 |
| 6. | South 24 Parganas | Entire District except KMC Ward No. 101 to 141 and district of Howrah except Amta-I, Amta-II, Bagnan-I, Jagatballavpur, Panchla, Udayanarayanpur, Domjur, Uluberia-II and those that are included in Division 7 below. |
| 7. | Hoogly and Howrah | Entire district of Hoogly and Bally-Jagacha Block, Howrah Municipal Corporation and Bally Municipal Area of district of Howrah. |

Each Division is further divided in Ranges and there will be five Ranges under each Division.

## GST Updates

The Narendra Modi government has moved a strong step towards introduction of the long-awaited Goods and Services Tax (GST), which is considered as the country's biggest tax reform. By readying the crucial draft constitutional amendment that's an essential prerequisite to rolling out the levy and is expected to be introduced in the winter session of the Parliament.

Commerce Minister Nirmala Sitharaman also confirmed recently that the government is *'very close to a solution on the Goods and Services Tax matter'*.

The Centre has promised that they will also clear pending compensation to states over the next couple of months in lieu of cuts in the central sales tax in its attempt to win them over and get them to accept the new tax, which is expected to be in place starting April 1, 2016.

The World Bank in recent report said that supply chain inefficiency is a major obstacle to manufacturing growth and competitiveness, and the goods and service tax offers a unique opportunity for the Indian government to reform logistics networks in the country. This will make things cheaper and reduce the tax burden on customers, but there are wider implications.

In order to roll-out GST by April, 2016, the Central Government has come up with the compensation plans, according to which, the states would be compensated for only three years, as against the proposal of the States which seeks compensation for a period of five years. Such compensation would be provided by the GST law itself and no provision related to such compensations would be provided in the Constitutional Amendment Bill.

The compensation will be given to states on the lines of a formula to be suggested by the 14th Finance Commission, which is likely to give its report later this month.

## Foreign Inward Remittance

The CBEC has explained the transaction and party involved in inward remintence and also clarified the issues relating to levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through Money Transfer Service Operator (MTSO). This circular also specified that it is in supersession of earlier Circular No. 163/14/2012-ST dated 10.07.2012. Clarification are as follow:

| No. | Issues | Clarification |
|---|---|---|
| 1 | Whether service tax is payable on remittance received in India from abroad? | No service tax is payable per se on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994. |
| 2 | Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service? | Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer,facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012. |
| 3 | Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India? | Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax.<br>The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee. |
| 4. | Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent | Yes. As the service is provided by Indian bank/ entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any. |
| 5. | Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India? | Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994. |
| 6. | Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax? | Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity. |

*[Circular No. 180/06/2014-ST dated 14.10.2014]*

Registered under RNI No. WBENG/2013/55099

# Changes in Reverse Charge Mechnism

1. Two new services are now covered in Reverse Charge Mechanism w.e.f. 11.07.2014.

    a. **Director of Body Corporate:** Director service provided to body corporate is brought under reverse charge (earlier it was only for companies).

    b. **Recovery Agent Service:** Recovery Agent service provided to Banks, Financial Institutions and NBFC is brought under reverse charge (100% Service Tax payable by service recipient).

2. The percentage of tax to be paid by Service Recipient and Service Provider has changed in case of Rent-a-cab Operator (which also include Radio Taxi or Radio Cab) w.e.f. 01.10.2014.

    a. **During the period 01.07.2012 to 30.09.2014:** Service Tax payable on non-abated value by the Service Provider was 60% and Service Receiver is 40%.

    b. **During the period from 01.10.2014:** Service Tax payable on non – abated value has changed to 50% in case of both Service Provider and Service Receiver.

*[Notification No.30/2012-ST dated 20.06.2012 as amended by Notification No. 45/2012–ST dated 07.08.2012 has been further amended by Notification No. 10/2014– ST dated 11.07.2014]*

3. The percentage of service portion in case of other works contracts including works contract, for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, has been increased from 60% of the gross amount charged to 70% w.e.f. 01.10.2014.

*[Rule 2A of Service Tax (Determination of Value) Rules, 2006 as amended by Notification No. 11/2014-ST dated 11.07.2014.]*

4. Time period for availing the credit of input service by the recipient of taxable service paying service tax under full and partial reverse charge w.e.f. 11.07.2014, is clearly specified now, as under:

    a. **In case of full reverse charge** : the credit shall be allowed after the service tax is paid.

    b. **In case of partial reverse charge**: the credit shall be allowed 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.

*[Rule 4(7) of Cenvat Credit Rules, 2004 as amended by Notification No. 21/2014-CE (N.T.) dated 11.07.2014]*





**BOOK POST**

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor
4, B.B.D. Bag (East) Kolkata - 700 001

**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.