Tax Talk

The Monthly Service Tax Bulletin

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Editorial

As winter is setting in, we all are gearing ourselves to welcome the New Year 2015 with positive energy and mood. The coming year shall also witness the challenges faced by the Government in introduction of the long awaited Goods and Service Tax (GST). This Winter Session of the Parliament seems to be promising as significant legislation will be placed before members of the House, as also confirmed by Finance Minister Mr. Arun Jaitley on 27th November 2014 once again, which will ultimately pave the way for a nationwide introduction of GST.

Cadre restructuring in the Service Tax Zone, Kolkata created three Commissionerate; Service Tax Kolkata I, Service Tax Kolkata II and Service Tax Audit. Kolkata I Commissionerate and Kolkata II Commissionerate is comprises of 7 Divisions each, dispensing away the earlier structure with effect from 15.10.2014. We expected a lot of new officers to join, to make it effective and workable, which is taking some time as of now, atleast at the senior levels. Consequently, the existing officers are over-loaded and to some extent looking for proper direction and infrastructure since one officer is in charge of several jobs. This is creating an environment of confusion and chaos for the person visiting the department. We hope this issue will soon be addressed to avoid the difficulties faced and to create a healthy work environment both for the assessees and the department

Recently, in a landmark judgement, the Telangana and AP High Court has ruled out that the CESTAT has no inherent power to order pre-deposit while remanding a case to meet the ends of justice and directed the Adjudicating Authority to adjudicate the matter without any deposit. The Court further stated that logically question of deposit does not arise unless there is an adjudication to suffer with the liability of the appellant. It will provide a big relief to all the appellants.

The amendment in CENVAT Credit Rules, effective from 1st September 2014, imposed restriction on availment of CENVAT credit of six months. Now, CBEC has clarified that the restriction of availment of CENVAT credit for manufacturers and output service providers within six months from the date of issuance of invoice/bill/challan, would apply when the credit is taken for the first time and not while taking re-credit of amount reversed in certain situations. The discussions have been placed in page 3.

In a recent case, the Uttarakhand High Court elaborated the distinction between the services of hiring of motor vehicles and services by renting a cab observing that when there is only a contract of hire and there is no renting of cab, the assessee cannot be assessed in respect of services rendered in connection with rent-a-cab service since there is no renting at all. It placed a contrary view against an earlier judgement of the Punjab and Haryana High Court. The discussions are placed in page 2 of the issue.

Tax Research Unit under the Ministry of Finance, has confirmed that the procedure prescribed for exemption to SEZ unit or developer, is for proper accounting and monitoring of benefit availed under the exemption. They further clarified that the SEZ unit or developer can route their application for authorization or can route quarterly statement in Form A-3, through specified officer in SEZ.

We 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 the Month November 2014 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-payment	6th Dec, 2014
Payment still due in VCES'2013 (with interest from 1st July 2014)	E-payment	31st Dec, 2014
* E-payment is mandatory for all assesses with effect from 1st Oct, 2014.		
Return	**Form**	**Due Date**
Half Yearly Return for the period April 2014 - September 2014 (with a late fees of Rs.1000/-)	ST-3	14th Dec, 2014
* For delay beyond 14th Dec, 2014 Rs.1000+Rs.100/day (Maximum Rs.20000/-)		

Uttarakhand High Court has given a judgement in a recent case, elaborating on the scope of taxable services rendered by way of "hiring" or "renting".

The Hon'ble High Court observed that though both rent and hire, may, in a different context, have the same connotation; in the context of rent-a-cab scheme and hiring, however they signify two different transactions. The Hon'ble Court stated that the fundamental distinction between rent-a-cab and a pure case of hiring is that in the case of a rent-a-cab scheme, (as is clear from the fundamental principle underlying the scheme), the hirer has the freedom to use the vehicle as he pleases, which, undoubtedly, implies that he must have possession and control over the vehicle.

In the context of renting, Section 65(105)(o) of the Act states that taxable service means any service provided or to be provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab and Section 65(91) of the Act provides definition as "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs.

The Hon'ble High Court have considered the following points as relevant while determining the nature of the service to be classified into "renting" or "hiring":

- The most important and crucial element, which we must bear in mind, is, whether there is a business of renting of cabs. Unless there is renting of cabs, there is no question of further enquiring as to the services, which may be rendered therein. In other words, any service, which may be rendered and which does not relate to renting of cabs, would be irrelevant for consideration.
- Unless the control of the vehicle is made over to the hirer and he is given possession for howsoever short a period, which the contract contemplates, to deal with the vehicle, no doubt subject to the other terms of the contract; there would be no renting.
- Under the rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle, wherever he wishes, and he is only obliged to keep the holder of the licence informed of his movements from time to time. When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with himself.
- Where the customer is merely enabled to make use of the vehicle by travelling in the vehicle transferred to the hirer, it would not amount to a renting service. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kilometers travelled.

The aforesaid judgement is however contrary to an earlier judgment passed by the Punjab & Haryana High court in case of Kuldeep Singh Gill. In the said case, the assessee provided the transport of passenger service to M/s Indian Oil Corporation wherein cabs were not leased out by the assessee for any interval of time for use by the customer according to its discretion.

Revenue contended that the said activity was taxable under the "Rent-a-Cab Scheme Operator" service. However the Hon'ble Tribunal passed the decision in favour of the assessee. The matter was then placed to the Hon'ble High Court by the Revenue involving the following questions:

A. Whether the matador rented by the Respondent in the present case, squarely falls within the definition of 'Cab' as per Section 65(20) of the Finance Act, 1994?

B. Whether the Ld. Tribunal is correct in holding that there was no renting out of cabs as the vehicles continued to be with the operator and moreover when the "Rent a Cab Scheme Operator Services" under the Finance Act, 1994 does not require ownership of the vehicle?

C. Whether in the facts and circumstances of the case, the use of matador by the Respondent amounted to a transport service or not especially when the matador was exclusively at the command of M/s Indian Oil Corporation?

D. Whether the services provided by the Respondent are covered under the definition of "Rent-a-Cab Scheme Operator provided under Section 65(59) of Finance Act, 1994?"

The Hon'ble Punjab and Haryana High Court observed that rent-a-cab scheme operator means any person engaged in the business of renting of cabs and service provided by a rent a cab scheme operator in relation to the renting of cabs is leviable to tax and thus held that since it is not a matter of dispute that the assessee was providing transport services on contract basis, it is liable to pay tax.

Hence, we see that there are two contradictory judgments of two High Courts on the same issue. The Hon'ble Punjab and Haryana High Court did not consider the above mentioned points in deciding whether the service falls under the Rent a cab Operator scheme, which was considered by the Hon'ble Uttarakhand High Court. The former Court held that since the assessee was providing transport services on contract basis, it will be liable to pay tax and disregarded the decision of the Tribunal in the same case which held that tax shall not be leviable under the said category since cabs were not leased out by the assessee for any interval of time for use by the customer according to its discretion.

Impact under Negative List

The above judgements were given in light of provisions prevailing in the positive list regime (i.e. period upto 30.06.2012). Section 66D of the Act comprising of Negative List of Services, contains the following entry:

From 01.07.2012 to 30.09.2014, the following service is non-taxable:

(o) service of transportation of passengers, with or without accompanied belongings, by-

(vi) metered cabs, radio taxis or auto rickshaws.

With effect from 01.10.2014, the following service is non-taxable:

(o) service of transportation of passengers, with or without accompanied belongings, by-

(vi) metered cabs or auto rickshaws.

Further, there would be an impact on abatement available, reverse charge applicability and CENVAT credit eligibility, under the Negative List concept.

GST Coming

GST, one of the key reforms to enable the Indian economy to operate in a simple and transparent indirect tax system, seems to be nearing its introduction. The Finance Ministry, in one of its recent endeavors, moved the proposed constitutional bill to the Ministry of Law for its legal consultation. The constitutional amendment bill has been approved and cleared by the Law Ministry. After receiving the mandate from the Law Ministry, it's upto the Finance Minister to place the constitutional bill before the parliament. Therefore, this Winter Session of the Parliament will have amendment bill placed before the members of the House, which will move the introduction of GST on faster track and lead way for a nationwide introduction of goods and service tax (GST).

Further, the National Congress Party has expressed its willingness to extend its support to the constitutional amendment bill for implementing the GST, which will be crucial for passing the bill in the Rajya Sabha. Given the extended aid, uncertainty still eludes among the States ruled by the Congress, which needs to be addressed.

The differences between the State and the Centre remains, despite the rigorous attempts made by the Finance Ministry. The Central Government's suggestion to fix the threshold limit of tax on traders to Rs.25 Lakhs, was turned down by the Empowered Committee of State Finance Ministers and consequently a threshold limit of Rs.10 Lakhs has been agreed. Further, the States expressed their non-acceptance on the inclusion of Petroleum, alcohol or tobacco within the GST. However, the Central Government is keen on including the petroleum and aviation turbine fuel (ATF) in the list of products to be covered by GST to reduce taxes on the fuel and make aviation industry profitable in the country. Against such backdrop, there is a fair amount of discussion on what would be a revenue-neutral rate for GST. Recent reports indicate that a sub-committee, comprising of both Central and State officials has recommended a rate of 27%, which is quite high to our understanding.

While the process of resolving debatable issues between the Centre and the State continues, the Empowered Committee of State Finance Ministers as well as the Finance Ministry is hopeful that the long-awaited GST will be positively rolled out by 1st April, 2016, which is a positive sign for the Indian fraternity at large.

Time Limit for Credit

A manufacturer or output service provider shall avail the CENVAT credit in respect of input and input service within six months of the date of issue of bill/invoice/challan. The credit shall not be allowed after the expiry of the said six months which effect from 1st September 2014.

[Proviso to Rule 4(1) and Rule 4(7) of CENVAT Credit Rules, 2004]

It has now been clarified that the condition of six months shall not be applicable when re-credit of the CENVAT credit reversed, on account of the following situations, is taken.

Situation 1:

A manufacturer or output service provider shall avail the CENVAT credit in respect of input service on or after the date of receipt of the bill/invoice/challan is received.

However, the CENVAT Credit availed is required to be paid back by the manufacturer or service provider, in case the payment of value of input service and service tax paid or payable thereon is not made within three months of date of bill/invoice/challan except in case of full reverse charge. Subsequently, when such payment of value of input service and service tax is made, the amount so paid back as service tax shall be re-credited.

[Third proviso to Rule 4(7) of CENVAT Credit Rules, 2004]

The criteria of six months shall not be applicable while taking the re-credit of the CENVAT credit reversed.

Situation 2:

If the value of any input or capital goods before being put to use on which CENVAT Credit has been taken, is written off or where any provision to write off fully or partially has been made in the Books of Account, then the manufacturer or service provider is required to pay an amount equivalent to the CENVAT credit so taken.

However, when the inputs or capital goods are subsequently used in the manufacture of final goods or to provide the output service, the amount so paid shall be taken as CENVAT credit.

[Rule 3(5B) of CENVAT Credit Rules, 2004]

The criteria of six months shall not be applicable while taking the re-credit of the CENVAT credit reversed.

Situation 3:

The manufacturer or output service provider shall be allowed to avail the CENVAT credit on inputs or capital goods sent, as such or after being partly processed, to job worker for further processing, testing, repairs, reconditioning or any other related activities and it is established that the goods are received back in the factory within 180 days of their being sent to the job worker.

In case inputs sent to job worker are not received back within 180 days, the manufacturer or service provider is required to pay an amount equal to credit taken on such inputs in the first instance. However, when the inputs are subsequently received back from job worker, the amount so paid shall be taken as CENVAT credit.

[Rule 4(5) (a) of CENVAT Credit Rules, 2004]

The criteria of six months shall not be applicable while taking the re-credit of the CENVAT credit reversed.

It has been clarified by the CBEC that the purpose of the restriction of time limit of six months is to ensure that after the issue of the bill/invoice/challan when credit is taken for the first time, the credit should be taken within six months of the issue of the document. Once this condition is met, the limitation has no further application.

It is, therefore, clarified that in each of the above three situations, the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules.

[Circular No. 990/14/2014-CX-8 dated 19.11.2014]

FAQ

Q An Indian partnership firm is engaged in providing service to Bangladesh. However, the payment is received in Indian currency. The department is of the view that such services cannot be considered as "Export of services" as per Rule 6A of the Service Tax Rules, 1994 and therefore tax is payable on such service. Is the contention of the department correct, can service tax be levied only on the ground that foreign exchange has not been received?

A The introduction of Negative List concept w.e.f. 1st July 2012 also brought sea change in the provision related to export of service and taxability of transaction where service is provided outside India. The issue, i.e. whether service tax is payable or not, even when a transaction is not qualified as export of service as per the new Rules requires proper understanding.

Rule 6A of the Service Tax Rules, 1994 prescribes conditions for determining when a service qualifies to be "Export of services".

However, to determine the taxability of a service, the charging Section 66B has to be considered, which provides, "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."

To determine the taxable territory, adherence should also be given to the Place of Provision of Services Rules, 2012 which determines the place where a service shall be deemed to be provided. According to these Rules, the place of provision of service is location of the service recipient, generally (subject to certain exceptions).

In the instant case, since the place of provision of service is outside the taxable territory. Hence, no service tax shall be payable by the provider in the given case.

However, the following additional conditions as contained in Rule 6A of the Service Tax Rules, 1994 are to be complied to qualify a service as "export of services".

The provision of any service provided or agreed to be provided shall be treated as export of service when,-

a. the provider of service is located in the taxable territory ,

b. the recipient of service is located outside India,

c. the service is not a service specified in the section 66D of the Act,

d. the place of provision of the service is outside India,

e. **the payment for such service has been received by the provider of service in convertible foreign exchange,** and

f. the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act.

In the given case, since the consideration for the services rendered has been received in Indian currency, the services cannot be treated as "Export of services", although it is not taxable.

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