Tax Talk

The Monthly Service Tax Bulletin

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Editorial

It's February, the month which brings with itself love, affection and togetherness. Let us take a pledge and spread the message of love to all. In this month we expect same from our beloved Finance Minister through Budget 2015. He has started his preparation very early and has also held number of pre-budget meetings with various stake holders in the economy for the Budget to be presented on the last day of February.

Heartiest Congratulations to Shri Partha Roy Choudhury, the new Commissioner of Service Tax, Kolkata and Shri Shiv Kumar Sharma, the Commissioner of Service Tax (Audit), Kolkata, on their promotion and posting to Service Tax, Kolkata.

Virtually every Finance Minister since years has been talking about launching the Goods and Service Tax, in their budget speeches. The time seems to have finally come for this new tax to become a reality. Though there are many hurdles in the way leading to GST implementation. Nevertheless, it would be remarkable to see how the Government will prepare a Model draft of GST Act, once the Constitutional Amendment Act is passed. The detailed updates on the subject have been placed at page 3.

The Hon'ble Supreme Court has issued instruction to discontinue the practice of printing and rolling out hard copies of judgments by the Editorial branch of the Registry for contingent/miscellaneous requirements w.e.f. 1st February, 2015. Previously 80 copies of judgments used to be rolled out and printed. The said number has been reduced to 14/16/18 depending upon the judgment being announced in civil/criminal or death case. It was also decided that the practice of printing and rolling out of hard copies of Cause Lists, will be discontinued. Looking at the Supreme Court's move to save forests, we should all take few steps to maintain the greenery.

Justice Raghuram, President of CESTAT, delivered an electrifying speech at FAPCCI, Hyderabad on January 17, 2015 in a seminar. He spoke at length regarding the prevailing adjudication process. He also compared Service Tax to an ATM stating that whenever the Government wants money, it introduces a new provision; it is as simple as using an ATM card withdrawing money from others' accounts.

Recently, CBEC has issued instruction to curb the practice of issuing summons in a casual manner. Guidelines have been issued to provide that summons need not always be issued, when a simple letter, politely worded, can also serve the purpose of securing documents relevant to investigation. It has been emphasized that the use of summons be made only as a last resort i.e. when it is absolutely required. Detailed discussion on "Summons", along with this Instruction, has been provided at page 2.

Though the service tax assessees apprehend for the concessions/exemptions from the upcoming Budget, however, it is always unpredictable as to what the Budget will bring within. Until the Hon'ble Finance Minister unveils the Budget 2015-16, we have to keep our fingers crossed and keep our hopes alive. Especially when he has asked departmental officers to show regard for assessee, at CBEC function on 28th January, 2015. We will present highlights of the changes that will be brought by the Budget in our next issue.

We highly 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 January 2015 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-Payment	6th February, 2015
RETURN	**FORM**	**DUE DATE**
Revised Return for the half year April 2014 - September 2014*	ST-3	90 days from filing of original return
* Due date of filing the original return was 14th November 2014		

Summons are issued during Central Excise/ Service Tax inquiry, sometimes it is required and sometimes it is not so warranted. Here we would like to present a discussion on the topic to understand issues regarding it.

Who can issue summons

Any Central Excise Officer not below the rank of Superintendent of Central Excise/Service Tax has the power to summon.

Purpose of issuing Summons

Summons are issued to extract evidence or to secure the production of a document or any other thing, in any inquiry, which an officer is conducting. It may be issued for the production of certain specified documents or things; or for the production of all documents or things of a certain description, in the possession or under the control of the person summoned.

Guidelines for issuance of Summons has been provided through Instruction F. No. 137/39/2007-CX.4 dated 26.2.2007, which is as follows:

- To call for information / documents, normally the mode of communication should be either in the form of a telephone call or by way of sending a simple letter.
- Issuance of summons should be resorted to only when the above mentioned modes of communication are found to be ineffective or are likely to jeopardize revenue interest or when it is essential to ensure personal presence of the person concerned to tender evidence or record statement.
- Summons should be issued after obtaining prior written permission from the Assistant Commissioner after reasons being recorded.

Mode of service of Summons

Section 37C of Central Excise Act, 1944 prescribes mode of service of summons:

- by tendering or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by CBEC, or
- where it cannot be served as above, by affixing a copy thereof at the place of the person, or
- where it cannot be served as provided above, by affixing a copy thereof on the notice board of the officer.

Date of service of summons

Summons shall be deemed to have been served on the date on which it is tendered or delivered or affixed, as mentioned above.

Obligation of persons summoned

All persons so summoned shall be bound to attend and all persons so summoned shall be bound to state the truth or make statements and to produce such documents and other things as may be required.

Who can attend Summons?

Summons can be attended either in person or by an authorised agent, as the Officer issuing summons may direct or allow.

Non-attendance of Summons

Section 174 of the Indian Penal Code provides that where the person so summoned to attend (in person or by an agent) at a certain place and time, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, he shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hun¬dred rupees, or with both.

Failure to produce document and things

Section 175 of the Indian Penal Code prescribes that where the person summoned intentionally omits so to produce or deliver document and things, he shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the document or electronic record is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Further, Section 77(1)(c) of the Finance Act, 1994 prescribes penalty for the person summoned for failure to appear or failure to produce the documents called before/by the Central Excise Officer, he shall be liable to a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher.

Summons - A judicial proceeding

As per Section 14 of Central Excise Act, 1944, an inquiry under a summon is deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860.

False evidence

As per Section 193 of Indian Penal Code, person at default shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Intentional insult or interruption

As per Section 228 of Indian Penal Code, person at default shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Latest Instruction

Instruction F. No. 207/07/2014-CX-6 dated 20.01.2015 provides the following guidelines, issued by CBEC, in relation to summons.

"(i) Power to issue summons are generally exercised by Superintendents, though higher officers also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;

(ii) where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

(iii) In all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorised the issue of summons.

Further, senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue."

GST - A Reality Check

The Government intends to introduce GST from the fiscal year starting in April 2016. There have been ample discussions on the proposed tax reform but all in vain. More the number of discussions, more has been the number of apprehensions and expectations and consequently, there is a lot of confusion as to what is the exact status of this tax reform and a high degree of uncertainty about its fate is prevailing all around. We are attempting to summarize the procedural requirement and the major hurdles that entail around the proposed introduction of GST along with its prolonged history.

Way travelled so far

As against the general hearsay, GST is not a newly brought in tax reform. In 2000, the Vajpayee Government started discussion on GST by setting up an empowered committee. The first reference of GST was made in the Budget speech of our then Finance Minister, Shri P. Chidambaram, in the year 2004 and had been a part of every budget speech thereafter, as a single centralized indirect tax in which tax was to be collected by the Centre and then be distributed between the Centre and the States. In the budget speech of 2006-07, he announced that GST will be introduced from 1st April, 2010.

After this announcement, the Empowered Committee of State Finance Ministers decided to set up a Joint Working Group in May 2007, with the Adviser to the Union Finance Minister and the Member-Secretary of Empowered Committee as co-convenors and the concerned Joint Secretaries of the Department of Revenue of Union Finance Ministry and all Finance Secretaries of the states as its members. The Joint Working Group, after intensive internal discussions as well as interaction with experts and representatives of Chambers of Commerce and Industry, submitted its report to the Empowered Committee in November 2007.

In the year 2009, Shri Pranab Mukherjee, the then Finance Minister, reiterated the GST introduction plans but with a basic change in the foundation itself. He explained that the broad contour of the GST Model is that it will be a dual GST comprising of a Central GST and a State GST. Ever since the first recommendation, the Governments have been trying to figure out a practically workable structure of GST in India.

For some reason or the other, this time, the proposed introduction seems to be accompanied with a bright beam of positivity and appreciation.

On 19th December, 2014 the Finance Minister, Shri Arun Jaitley, tabled the Constitutional (122nd Amendment) Bill 2014 in the lower house of the Parliament (the Lok Sabha) after its approval by the Union Cabinet on 17th December, 2014.The minister described the bill as the "biggest tax reform since 1947".

The way ahead

The introduction of the Amendment Bill in the Parliament is indeed a welcome step, unarguably the first major economic policy from the NDA Government and reflects the Government's commitment to push through its much-promised economic reforms and a desired move forward towards achieving a full-fledged harmonized system of GST.

However, tabling of the GST Bill in the Lok Sabha is only half-a-step towards introduction and implementation of the reforms. In reality much more is needed at this hour. The Government needs to ensure that the Constitution Amendment Bill swiftly makes its way to attainment of the President's assent and for this, the bill shall have to be passed by each House of Parliament separately by majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting

AND shall also have to be ratified by 50% of the total number of State Assemblies.

This constitutional amendment shall pave way for GST introduction and furtherance of legislative formalities. Here a question arises as to why the constitutional amendment?

The present Constitution of India does not provide for any concurrent taxation powers to the Centre as well as the States. Accordingly, since GST implementation would require simultaneous power to vest with the Union and the State Legislature, this required the Constitution to be amended for conferring such simultaneous powers to make laws for levying goods and services tax on every transaction of "supply of goods or services or both".

While passage of the Bill is expected to be smooth in the Lok Sabha, where the NDA Government has better numbers, its passage in the Rajya Sabha remains doubtful, given the lack in numbers and the acrimonious and united opposition that it is currently facing.Due to the recent run-ins between the Government and the opposition and the rarity of unity amongst the opposing political parties, achieving a consensus is going to be an uphill task for the Central Government.

There is a heated argument that in case of a deadlock between the two houses regarding passage of the bill, the President may summon a joint session of the two houses and the deadlock may be resolved by a simple majority. However, a joint session cannot be the recourse in this case, as every Constitutional Amendment bill needs to attain assent of each house separately.

Being hopeful that the Constitutional Amendment Bill shall be passed, the next step shall be the Formation of "Goods and Services Tax Council" (GST Council).

The Council shall make the recommendations to the Union and States on various matters and with due consideration to the said recommendations, the next milestone to be achieved shall be preparation and finalization of the draft GST bill by the Central Government with the help of the Empowered Committee of State Finance Ministers.

The GST bill (including IGST provisions) shall again go through the parliamentary approval process and will have to be passed by both the houses of the Parliament (by simple majority) and further assent of the President. This bill, on being passed by the Parliament and attaining the President's assent, shall be the Central Goods and Services Tax Act. Simultaneously, the State Legislatures shall facilitate passage of respective state specific GST Legislations based primarily on the principles of the CGST Act.

On attainment of finality of both the Central and State GST Acts, proper implementation procedures shall be required to be followed for smooth, effective and efficient GST structure in India. Though it seems to be a long way to achieve the targeted implementation of GST, we hope the stiff and stern moves of the current Government catalyzes the whole process and by the promised date of 1st April, 2016, we will be able to see existence of the much awaited GST in our country.

To sum up, politics has always been the 'art of the possible, the attainable — the art of the next best' and it will be of interest to watch the move of the Government in the coming months. However, given the resoluteness of the NDA Government and its avowed intent to introduce the GST by April 2016, it will indeed be jeopardous for us to not be prepared for the same.So, its time we gear up and look at our business or profession models keeping the impending GST in mind.

FAQ

Q We have received a e-mail from Service Tax Department mentioning that our Commissionerate, Division and Range have been changed and they have provided us with the new Commissionerate, Division and Range codes. Being a service tax assessee, whether anything has to be done by us in this regard?

A You must be aware of the fact that due to restructuring of the Central Excise & Service Tax Commissionerate in CBEC, the erstwhile Service Tax Commissionerate, Kolkata has been reorganized and divided into 3 Commissionerate: Service Tax I, Service Tax II and Service Tax (Audit).

The Service Tax I Commissionerate and the Service Tax II Commissionerate have been divided into Divisions based on the location of service provider which is decided on the basis of the Municipal Ward. These Divisions have been subdivided into Range offices, which have been created on the basis of the initial letter of the name of the assessee.

Henceforth, you should use this new Code, wherever required and moreover it is also appearing in your Registration Certificate (Form ST-2) available at www.aces.gov.in. It is advisable for all the assessee to take the print of the Form ST-2 having the new code. Henceforth, this ST-2 should be used for all purposes and any future communication is to be sent to the new Division and Range office.

Q We have received a mail from Service Tax Department asking ward number of Municipal Corporation along with a copy of Trade License. However, we do not have any Trade License. What should be done in this case?

A As already mentioned earlier, the division of a service tax assessee is determined on the basis of ward numbers in Municipal Corporation area. The Department can find out your ward number by seeing your trade license as it is the only document which contains municipal corporation ward. This is the reason that the Department is asking for the copy of trade license.

Therefore, you are required to provide the ward number to the Service Tax Department for determining your new Division and Range. It is on the basis of this information, your file will be transferred to the concerned Division and Range office.

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