INDIRECT TAX EXPRESS

Fortnightly e-newsletter from m/s DAVA & Associates, Chartered Accountants

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FROM THE EDITORIAL TEAM

Filing Service Tax Return?? - Few Precautions to be taken

Every person liable to pay service tax whether as a provider of service or as a service recipient and Input service distributor is required to submit half yearly return in Form ST-3 within **25th of the month following the particular half year** (i.e., returns for the period October'2014 to March'2015 are to be filed by 25th April, 2015.). The assessee needs to file service tax electronically on ACES website by choosing one of the two facilities being offered by the department at present:

- Either file it online, or
- Download the off-line return utilities which can be filled up off-line and uploaded to the system through the internet.

Late Fee and Penalty for filing late return- Where returns are filed after the due date, late fee is payable for delayed filing of return. The Late Fees payable may range from Rs.500/- to a maximum of Rs.20000/- per return, depending upon the period of delay. Apart from late fee, penalty can also be levied under Section 77(2), for non-filing of return which can be upto Rs.10000/-.

Revised Return -The assessees are also allowed to rectify the mistakes and file Revised Return within 90 days from the date of filing of the original return. If mistake comes to notice after 90 days, there is no provision of submission of revised return.

Nil return- Even if there is no business during the period assessee will have to file Nil return as long as the registration certificate is valid. However central excise officer can reduce or waive penalty, if nil return was not filed or late filed, if sufficient cause is shown.

Disclosure in Payable Section in case of Partial Reverse Charge:

- The details are available in the Notification No. 30/2012-ST dated 20-06-2012, effective from 01-07-2012, made applicable to certain specified services.
- Service Provider has to select 'A10.1'.
- If the Assessee is liable to pay tax under Partial Reverse Charge as Provider, he will have to select 'Yes' under 'A10.3' and select the percentage from 'A10.5'.
- Service Receiver has to select 'A10.2'.
- If the Assessee is liable to pay tax under Partial Reverse Charge as Receiver, he will have to select 'Yes' under 'A10.4' and select the percentage from 'A10.6'.

Disclosure in Payable Section while availing exemptions under particular Notification: For entering details of any exemption availed under a Notification and entering the amount of exemption claimed, the below mentioned steps have to be followed:

- 'A11.1' field should be selected as 'YES'.
- 'A11.2' will be enabled. A drop down list of Notification No.(s) / Sl. No will be enabled and displayed in 'A11.2', relevant for the selected service. The Assessee can select the Exemption Notification No. / Sl. No. to be availed by him. The assessee should select the Notifications and Sl. Nos. from the drop-down only and should not enter the numbers. Entering of text / No's is not allowed in these fields.

Inside this issue:

GST NEWS

The implementation of the landmark Goods and Services Tax (GST) regime, proposed from April 1, 2016, would increase India's gross domestic product (GDP) by one to two per cent, Finance Minister Arun Jaitley said on 16.04.2015. The GST is a "win-win" for both Centre and States and will provide for levy of 1% additional tax by states for inter-state transfer of goods for two years. As regards the compensation to the states on account of any possible loss of revenue following implementation of the GST, Jaitley said there will be 100% compensation in first three years, 75% in the fourth year and 50% in the fifth year.

IDT NEWS

The government has collected Rs 4.78 lakh crore in indirect taxes in the April- February period, an increase of 7.4 per cent over the corresponding period in the previous fiscal. The indirect tax revenue collections stood at Rs 4.41 lakh crore in the April-February period of the last fiscal. 88.5 per cent of the revised target for the entire fiscal has been achieved till February.

Disclosure in Payable Section while availing abatement:

- 'A12.1' field should be selected as 'YES'.
- 'A12.2' field will be enabled. A drop down list of Notification No(s) / Sl No will be enabled and displayed in A12.2, relevant for the selected service. The Assessee can select the Abatement Notification No / Sl No availed by him. The assessee should select the Notifications and Sl. No's from the drop-down only and should not enter the numbers.

Some Common Errors: Here are some other common errors while filing service tax return which should be avoided by the assessees:

- The error message "The login information is wrong. Please try again. Your password will be blocked after 5 attempts" appears when assessee user-name or password is not entered correctly.
- Mismatch in the selection of return type (original/revised) in excel utility and that selected at the time of uploading the return. This will lead to rejection of the return.
- Wrong rates of tax entered in the offline utility may lead to rejection of the return.
- Incorrect registration number or wrong selection of constitution or wrong category of registrant will lead to rejection of return.
- Amount entered in the return for a given challan higher than the amount actually deposited against the said challan will lead to rejection of return.
- Difference in the amount shown as paid by CENVAT in Paid section and that entered in CENVAT section will lead to return not being validated.
- Amount shown as paid in cash higher than the amounts mentioned in the challan will throw an error while validating the return utility.

NOTIFICATIONS & CIRCULARS

- The Central Government vide **Notification Nos. 10-11/2015-ST,** both dated **08.04.2015** has Exempted the taxable services provided or agreed to be provided against a scrip by a person located in the taxable territory from service tax, subject to certain conditions. This notification is applicable to Merchandise Exports from India Scheme duty credit scrip and Service Exports from India Scheme duty credit scrip.

- CBEC vide **Circular No. 183/02/2015-ST** dated **10.04.2015** has issued clarification that change in rate of service tax will come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015.

- The Central Government vide **Notification Nos. 20-21/2015-CE** dated **08.04.2015** has Exempted the goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), when cleared against Service Exports from India Scheme duty credit scrip and Merchandise Exports from India Scheme duty credit scrip, issued by issued by the Regional Authority under paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy.

QUIZ!!!

1. What is the penalty prescribed for Failure to keep, maintain or retain books of account and other documents as required in accordance with the provisions of the Finance Act, 1994?

2. An individual providing service of Manpower Supply or Security services is liable to pay service tax at what percentage of taxable service w.e.f 01.04.2015?

3. Application for removal of Excisable goods for export whether with or without payment of duty is to be made in which form?

(Please mail your replies with your name and mail id to **davaidtexpress@gmail.com)**
(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1- **Rs. 5 crore**
Reply to Q2 – **Speed Post, Life Insurance**
Reply to Q3– **27%**

Reply given by:
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CASE UPDATES

1. **Inox Air Products Ltd. Vs Commissioner of Central Excise, Nagpur [2015 (38) S.T.R 90 (Tri.-Mumbai)]**

Issue- The appellant is engaged in setting up of air separation plant at the customers premises which is used for manufacturing oxygen which, in turn, is ultimately used by the appellant's customers in manufacturing of their final products. During the operation of their air separation plant, electricity is required. Electricity is supplied by their customers and no separate charges are payable by the appellant for electricity so used. The service charges vary if electricity consumed is lower or more than the predetermined units of electricity. The appellant is paying service tax on the actual amount received as service charges. Whether the department's view that the price of electricity shall be included for determining the taxable value for the purpose of service tax is sustainable?

Decision- The Hon'ble CESTAT held that Gross amount charged by the service provider for the service provided is as per the agreement. The price of the electricity cannot be considered as an additional consideration received by the appellant from their customers. The appellant does not get benefited by the free supply of the electricity in any way. Further the electricity is consumed in manufacture of oxygen. Thus, electricity is an input for the manufacture of oxygen. Oxygen in turn is used by the appellant's client in the manufacture of iron and steel products. The electricity cannot be considered as an input for providing services of operation of air separation plant and hence it cannot be considered as an additional consideration flowing to the appellant from their client for providing the service of operation of plant and cannot be considered as part of the gross amount charged for the service of operation of plant. In view of this the appeal was allowed.

2. **CEV Engineering Pvt Ltd Vs Commissioner of Central Excise, Delhi-II [2015 (38) S.T.R 93 (Tri.- Del.)]**

Issue- The appellant is engaged in assembling various items packing them together as CNG Kits for cars. The appellant imports ECUs, regulators, injectors, etc. on payment of appropriate custom duty and purchases other items like CNG cylinder, high pressure pipe, gauge, hoses etc from domestic manufacturers on payment of excise duty. For making the CNG kit they put these items in a box and also provide a diagram/ blue print manual showing how the CNG kit is to be fitted. Whether the act of collecting various components and fitting them in a box for installation in the car amounts to manufacture?

Decision- The appellant either imported or domestically procured various components which are put into a box along with installation manual. The imported components have suffered custom duty and domestically procured items have suffered central excise duty. The appellant had also paid service tax on installation charges charged from customers. Mere putting various components for installation in the vehicles so that it can run on CNG does not amount to manufacture. The Hon'ble High court of Andhra Pradesh in case of XI telecom has held that making cable jointing kit does not amount to manufacture. Similarly the Tribunal in the case of Dalmia Industries vs CCE held that collecting bottles, feeder nipples and bottle lids from diverse sources in the market, packing them in a combine pack after sterilization and selling them under the name of 'Milk Care Designer Feeder' would not amount to manufacture and the judgement of Tribunal has been affirmed by the apex court. Similar view was taken in many other cases. Therefore following the ratio of above judgements the impugned order is set aside.

FREQUENTLY ASKED QUESTIONS

"Success is the ability to go from one failure to another with no loss of enthusiasm"

-Winston Churchill

Query 1: M/s XYZ is a Resident Welfare Association and contribution from its members is collected on the basis of floor area of each flats by RWA and therefore contribution from few members exceeds Rs. 5000 per month but that of the other members is below Rs. 5000/-. Whether all the members of RWA are ineligible to claim exemption? To what extent exemption will be available?

Reply by e-newsletter team: CBEC, **vide circular no 175/01/2014 ST** dated 10.01.2014, has clarified that in case contribution of member per month exceeds Rs 5,000 then entire contribution of such members would be taxable whereas Sl. No 28 (c) of the mega exemption notification reads as "…. ***up to an amount of five thousand rupees per month per member*** *for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex*

Therefore, contribution of only such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. In our opinion, the views of the CBEC are correct and if contribution exceeds Rs. 5000/- from a member in a particular month, then entire contribution is taxable.

Query 2: M/s. X Ltd. is liable to pay service tax as a Service Receiver of works contract service. But as a service provider, the company is a Small Service Provider (Turnover being less than Rs. 10 lakhs) and is exempt under service tax. Will the assessee still be liable to pay service tax under Reverse Charge Mechanism?

Reply by e-newsletter team: The liability of X Ltd. as Service Provider and Service Receiver is independent of each other. Thus in this case, if X Ltd. is availing exemption owing to turnover being less than Rs. 10 lakhs, it shall not be obliged to pay any service tax as a service provider as per Notification No. 33/2012 dated 20.06.2012. However as service receiver, it is not eligible for any such exemption of Small Service Provider under the said notification. Thus X Ltd. shall still be liable to pay service tax under the partial Reverse Charge Mechanism irrespective of its turnover.

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