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Tax Talk

The Monthly Service Tax Bulletin

Editorial

The scorching heat seems to have fractioned the pace of economic growth a bit! The effect of this slow down sensed a back foot on the efforts being made for introduction of GST. Passage of the Constitution (122nd Amendment) Bill, 2014 has been stalled at least till the monsoon session of the Parliament and has been referred to the Select Committee by the Rajya Sabha. The intensive feeling amongst the stakeholders regarding introduction of GST with effect from 1st April, 2016 seems to have nullified with this delay, but the enthusiasm and optimism of our FM Shri Arun Jaitley and his team is unshaken and they still aim to abide by the targeted dead line.

On the 14th May, 2015, Hon'ble President gave assent to the Finance Bill, 2015 and it became the Finance Act (No. 20) 2015. The changes to be effective from enactment of the Act are effective from the said date. Further, for other changes to be effective from notification date on the service tax front, the Central Government has notified 1st June, 2015. The effective date for increase in service tax rate and also other changes is 1st June, 2015 except the levy of Swachh Bharat Cess and 'any service' provided by Government to business entity, which is kept on hold as of now. The changes applicable with effect from said dates are discussed at Page 2.

With the increase in rate of service tax from 12.36% to 14% being notified, the people at large are quite confused about ascertaining their liability in this transition period. Rule 4 of the Point of Taxation Rules, 2011 deals with this issue. The rule can be interpreted for easy understanding as follows:

There are three events in a transaction relevant for determining applicable tax rate, namely, provision/completion of service, raising of invoice and receipt of payment. If any two out of the three events take place before 1st June, 2015, the old rate of 12.36% shall apply otherwise 14% service tax shall be payable. On the contrary, for a service receiver, there again is a legal jugglery and hence, determination of lower/old tax rate in certain cases may invite litigations and disputes. We hope the board shall clearly explain the procedure for tax rate determination to avoid any such dispute.

The Section 67 has been amended to make more robust rules to tax reimbursements. New set of rules for determining service tax on reimbursement of expenses is awaited, keeping assessees at a dilemma.

The Finance Bill 2015 also proposed to levy tax on 'all services' provided by Government under reverse charge mechanism in place of existing taxability of only 'support services' provided by Government. This is also kept on hold, probably on understanding the very far reaching effects of such amendment beyond one's imagination.

A significant change revamping earlier penal provisions (Sections 76 and 78 of the Finance Act, 1994) has been brought by the Finance Act, 2015. The service tax penal provisions have been aligned with central excise penal provisions. The provisions now are much more stringent and objective and accommodate no space for any discretion of the authorities since the provision enabling waiver of penalties in case of reasonable cause is omitted ignoring the natural justice.

The penalty prescribed in Section 76 of the Finance Act, 1994 deals with non-fraudulent cases, which is never found in the notices issued by the department and hence, becomes just theoretical. The new penal provisions are discussed at page 3.

We, with immense pleasure would like to inform our readers about the launch of our new website 'www.gstpeople.com'. You can log on to the website for more details and also find all soft copies of the bulletin 'Tax Talk' since its inception in April 2012! Hope the website turns out to be resourceful for you all.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestions/opinions of the readers. Please feel free to convey your views at servicetaxgoyal@gmail.com.

CA Sushil Kr Goyal

DUE DATES		
PAYMENT	**FORM**	**DUE DATE**
Payment for the month of May, 2015 (assessees other than individuals, proprietorship firm, partnership firm and LLP)	E-payment	6th June 2015

June 2015

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Changes by Finance Act, 2015

Entertainment Event/ Amusement Facility

'Admission to entertainment event or access to amusement facility' is omitted from the negative list and made taxable.

However, the following services are granted exemption by way of new entry in the mega exemption notification:

Services by way of right to admission to:

i. exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet;
ii. recognized sporting events;
iii. award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs.500 per person.

Manufacture of alcoholic liquor

The negative list earlier covered 'any process amounting to manufacture or production of goods' and hence the same were out of tax net. The said entry has been amended to exclude 'any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption' from the negative list and the same is now taxable.

Also, the exemption in respect of 'carrying out of intermediate production process of alcoholic liquor for human consumption on job work' is withdrawn by amending the mega exemption notification.

Moreover, the definition of 'process amounting to manufacture or production of goods' as per section 65B(40) has been amended to exclude 'process amounting to manufacture of alcoholic liquors for human consumption' from the ambit of the definition.

Social Security Schemes

The following exemptions are granted by way of entries in mega exemption notification for the newly introduced social security schemes by the government.

(a) Services of general insurance business provided under Pradhan Mantri Suraksha Bima Yojna. [Entry No. 26(p) inserted]
(b) Services of life insurance business provided under 'Pradhan Mantri Jeevan Jyoti Bima Yojana' and 'Pradhan Mantri Jan Dhan Yogana'. [Entry No. 26A (e) & (f) inserted]
(c) Services by way of collection of contribution under Atal Pension Yojana. [Entry No. 26B inserted]

CENVAT Credit Rules

Rate of Reversal of CENVAT Credit by a provider of taxable as well as exempted services, not maintaining separate books of accounts and opting to pay as per Rule 6(3)(i) of CENVAT Credit Rules, 2004 is increased from "6% (+ E. Cess) of value of exempted services" to "7% of value of exempted services".

Lottery Promotion, Marketing etc.

"Betting, gambling or lottery" is covered in the Negative list and hence is out of tax net. An explanation that 'betting, gambling or lottery shall not include the activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner', is inserted to this negative list entry (Section 66D(i)).

Further, Explanation 2 to definition of service, which explains about "transaction in money or actionable claim", is amended to clarify exclusion of such services from the ambit of such phrase.

Such explanations now make it explicitly clear that even though lottery itself is not subject to tax, aforesaid services in relation to lottery are taxable.

Applicable with effect from 1st June, 2015

Services by foreman of chit fund

The Explanation 2 to the definition of service as per Section 65B(44) is amended to specify that the expression "transaction in money or actionable claim" shall not include the activity carried out by a foreman of chit fund for conducting or organising a chit in any manner.

Accordingly, services provided by a foreman of chit fund are taxable.

Reference to Main Service

The following illustration is incorporated in section 66F(1) to exemplify the scope of the provision of this section:

"The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax."

Taxability of Reimbursements

Description of 'Consideration' as per the Explanation to Section 67 of the Act has been amended to specify that 'consideration' shall include any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed.

Further, Section 94(2)(aa) of the Act is amended to empower Central Government to determine the circumstances and conditions under which an amount shall not be a consideration, under section 67. New set of rules for such determination of taxability is awaited.

Revision Application made applicable

Section 86 is amended to prescribe that remedy against orders passed by Commissioner (Appeals) in matter involving rebates of Service Tax relating to export of services shall lie in terms of section 35EE of the Central Excise Act.

It has further been clarified that all appeals filed before the Appellate Tribunal in respect of such matters after the Finance Act, 2012 came into force, and pending before it up to 14.05.2015, shall be transferred and dealt in accordance with the provisions of section 35EE of the Central Excise Act, 1944.

Settlement Commission

Settlement Commission does not have power to reopen completed proceedings, as Section 32H of the Central Excise Act, 1944 has been omitted.

Also, other sections governing Settlement of Cases are updated and amended to omit inapplicable clauses.

Recovery of self assessed Tax

A new subsection (1B) is inserted to Section 73 which provides that recovery of the Service Tax amount self assessed and declared in the return but not paid shall be made under section 87, without service of any notice; and also subsection (4A) to Section 73 that provides for reduced penalty if true and complete details of transaction were available on specified records, is omitted.

Applicable with effect from 14th May, 2015

Panel Provisions W.e.f. 14.02.2015

Penalty under Section 76 (penalties in cases **not involving fraud** or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax)	
Maximum Penalty 10% of Service Tax amount involved	
Reduced Penalties:	
Condition for reduction of penalty	Reduced Penalty Leviable
Tax & Interest Paid Within 30 days of receipt of Show Cause Notice	**Nil**
Tax, Interest and Reduced Penalty Paid within 30 days of receipt of Order	**25%** of Penalty Imposed in such order
If the penalty amount gets increased in any appellate proceeding and 25% of increased penalty is paid within 30 days of such appellate order	**25%** of Increased Penalty Imposed in such appellate order

Penalty under Section 78 (penalties in cases **involving fraud** or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax)	
Penalty of 100% of Service Tax amount involved	
Reduced Penalties:	
Condition for reduction of penalty	Reduced Penalty Leviable
Tax, Interest and Reduced Penalty Paid Within 30 days of receipt of Show Cause Notice	15% of Penalty imposed in such order
Tax, Interest and Reduced Penalty Paid within 30 days of receipt of Order	25% of Penalty Imposed in such order
If the Service Tax amount gets modified in any appellate proceeding	Penalty shall be modified in accordance with tax
If the Penalty amount gets increased in any appellate proceeding, service tax, interest and 25% of increased penalty is paid within 30 days of such appellate order	25% of Increased Penalty Imposed in such appellate order
Where the details relating to such transactions are recorded in the specified records for period from 08.04.2011 to 14.05.2015	Penalty imposable shall be 50% of tax involved
(Specified Records here refers to 'records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts')	

Transitional Provision

Section 78B has been inserted in the Act to prescribe that all cases pending adjudication as on 14th May, 2015 shall be governed by new amended provisions and the Thirty days limit for paying reduced penalties under sections 76 or 78 shall be counted from 14.05.2015.

Waiver of Penalty

Section 80, which provided for waiver of penalty in view of natural justice under existence of reasonable cause for failure to comply with the provisions, is omitted.

GST

Though the Constitutional Amendment Bill for GST was passed by the lower house of the Parliament, it could not take a leap beyond the most probable hurdle of being stuck in the upper house. The Rajya Sabha on 12th May, 2015, referred the GST (Constitutional Amendment) Bill to a Select Committee. The select committee has a 21 member panel and is headed by BJP MP Bhupendra Yadav.

The Rajya Sabha committee met recently and heard the Revenue Secretary Shaktikanta Das on the key issues and impacts of the bill. He explained in detail the differences between the Bill brought by the present government and its predecessor. A major difference being the way petroleum is to be treated in the proposed regime. While the 2011 Bill sought to keep it out of GST, the present bill seeks to include it under the GST net, though from a later date. Mr. Das later also commented *"We are working overtime to introduce GST from April 1, 2016."*

The committee also decided to tour some states to talk to other stakeholders Also, the committee may invite experts like Mr. Vijay Kelkar, chairman of the 13th Finance Commission; Mr. Y. V. Reddy, Chairman of the 14th Finance Commission and also ex-chief of the Reserve Bank of India; former chairman of the Central Board of Excise and Customs, Mr. Sumit Majumdar, and former National Institute of Public Finance and Policy head, Mr. Govind Rao.

The business chambers may be called for opinions and suggestions in further rounds. Once these discussions are through, the committee will take up clause by clause discussion of the bill.

The panel has been asked to give its report by the last day of the first week of the monsoon session of Parliament. On such reference being made to the committee, the proposed introduction of GST with effect from 1st April, 2016 seems to have been delayed. However, the comments of the concerned people and the efforts of the Government to keep up its commitment and enthusiasm to abide by the proposed deadline give a positive sign and show a possibility of timely introduction of GST this time.

Service Tax Rate Enhanced to 14%

The rate of Service Tax is increased from 12.36% (including Education Cesses) to 14% with effect from 1st June, 2015.

'Education Cess' and 'Secondary and Higher Education Cess' are not applicable on the revised rate of Service Tax and hence no more required to charged separately over and above 14% of tax.

Swachh Bharat Cess is kept in abeyance as of now and will be announced if the Central Government feels the need of the same.

Corresponding effect of the increase in rate is also notified for the rate of tax payable under composite scheme in respect of the certain services and the same are tabulated as under:

Composite Rates		
Particulars	Rate upto 31.05.2015	Rate w.e.f. 01.06.2015
Air Travel Agent Services for:		
Domestic Bookings	0.6% + E. Cess	0.7%
International Bookings	1.2% + E. Cess	1.4%
Services of an Insurer carrying on life insurance business:		
1st Year	3% + E. Cess	3.5%
Subsequent Years	1.5% + E. Cess	1.75%
Money Changing Services for amount of currency exchanged:		
Upto Rs.1 Lakh	0.12% + E. Cess (Min. Rs. 30/-)	0.14% (Min. Rs. 35/-)
More than Rs.1 Lakh upto Rs.10 Lakhs	Rs.120/- + (0.06% + E. Cess on amount exceeding Rs.1 Lakh)	Rs.140/- +(0.07% on amount exceeding Rs.1 Lakh)
More than Rs.10 Lakh	Rs.660/- + (0.012% + E. Cess on amount exceeding Rs.10 Lakhs) [Max. Rs.6,000/-]	Rs.770/- + (0.014% on amount exceeding Rs.10 Lakhs) [Max. Rs.7,000/-]
Lottery Distributor or Selling Agent Services (promotion, marketing, organizing etc.):		
If guaranteed prize payout is more than 80%	Rs.7,000/- on every Rs.10 lakhs (or part thereof) of aggregate face value of tickets + E. Cess	Rs.8,200/- on every Rs.10 lakhs (or part thereof) of aggregate face value of tickets
If guaranteed prize payout is less than 80%	Rs.11,000/- on every Rs.10 lakhs (or part thereof) of aggregate face value of tickets + E. Cess	Rs.12,800/- on every Rs.10 lakhs (or part thereof) of aggregate face value of tickets

BOOK POST

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