INDIRECT TAX EXPRESS

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

May, 2015
Volume 12, Issue 2

FROM THE EDITORIAL TEAM

Changes in Service Tax applicable from 1st June 2015 onwards

Some of the major changes in Service Tax made through the Finance Act, 2015 have been notified to be effective from 01.06.2015 vide Notification No. 14/2015 –ST dated 19.05.2015. Further, changes in Service Tax Rules, 1994 are effective from 01.06.2015 vide Notification No. 15/2015 –ST dated 19.05.2015. Furthermore, changes in Mega Exemption are effective from 01.06.2015 vide Notification No. 16/2015 –ST dated 19.05.2015. Given below is a list of all these changes:

1. Increase in the effective rate of tax from 12% to 14% [Section 66B] –

- In Section 66B which is the charging section of service tax, the words 'Twelve per cent' have been replaced with 'Fourteen per cent'. This means service tax is now chargeable at 14% instead of 12%.
- **Determination of point of taxation as a result of change in rate of service tax -**Rule 3 of PoTR provides that point of taxation is earliest of following:
  - Date of invoice or
  - Date of completion of service or
  - Date of receipt of advance.

Rule 4 of PoTR, which determines point of taxation in case of change in effective rate of tax; provides that the applicable tax rate would be the prevalent rate during the period when 2 out of the aforesaid three events have taken place. A list of possible scenarios and the PoT is given below:

Situation	Date of invoice	Date of completion of service	Date of receipt of advance/payment	Rate of Tax
1	Prior to 01.06.2015	Prior to 01.06.2015	After 01.06.2015	12.36%
2	After 01.06.2015	Prior to 01.06.2015	Prior to 01.06.2015	12.36%
3	Prior to 01.06.2015	After 01.06.2015	Prior to 01.06.2015	12.36%
4	After 01.06.2015	After 01.06.2015	Prior to 01.06.2015	14%
5	Prior to 01.06.2015	After 01.06.2015	After 01.06.2015	14%
6	After 01.06.2015	Prior to 01.06.2015	After 01.06.2015	14%

2. Changes in effective rates of tax in case of composition Scheme [Service Tax Rules, 1994]

The alternative Service Tax rates prescribed for services such as money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent has been proportionately revised considering the upward revision in Service Tax Rates.

3. Changes in Definitions [Section 65(B)] –

- Definition of 'amusement facility' in clause (9) omitted.
- Definition of 'entertainment event' in clause (24) omitted.
- In clause (40) defining 'process amounting to manufacture or production of goods', the words 'alcoholic liquors for human consumption' have been omitted.

4. Changes in Negative list of services [Section 66D] –

- '**Process amounting to manufacture or production of goods' in clause (f), will now exclude 'alcoholic liquors for human consumption'.

Inside this issue:

GST NEWS

- For the first time after its formation, the 30-member select panel for the goods and services tax (GST) met with officials from the finance ministry on 27th May, 2015, Wednesday and is slated to meet state and industry officials soon. The government is keen to keep the revenue-neutral rate below 22 percent.
- Government needs to reconsider levy of 1% additional tax by states over and above GST rate as it could make intrastate movement of goods expensive and hurt the 'Make in India' campaign, Chief Economic Advisor Arvind Subramanian said on 28th May, 2015

IDT NEWS

- The Central Board of Excise and Customs (CBEC), the apex body for indirect tax policy making, is in its full strength now as the government has appointed five new members. The CBEC has surpassed its indirect tax collection target by a handsome margin of Rs 4,000 crore to reach Rs 5.46 Lakh Crores in the 2014-15 fiscal.

- Explanation has been inserted after clause (i) that the expression "betting, gambling or lottery" shall not include the activity specified in *Explanation* 2 to clause (*44*) of section 65B.
- Clause (j), i.e. 'admission to entertainment events or access to amusement facilities' has been omitted.

5. Omission of the charging section of Education Cess –

Section 95 of the Finance (No. 2) Act, 2004, which was the charging section of Education Cess, has now been omitted. As a result, Education Cess is no more chargeable on service tax.

6. Omission of the charging section of Secondary & Higher Education Cess –

Section 140 of the Finance Act, 2007, which was the charging section of Secondary & Higher Education Cess, has now been omitted. As a result, Secondary & Higher Education Cess is no more chargeable on service tax.

7. Changes in Mega Exemption Notification 25/2012-ST –

- Entry No. 30(c) - Exemption to intermediate production process as job work in relation to any goods on which appropriate duty is payable by the principal manufacturer has now been restricted to any goods excluding alcoholic liquors for human consumption.
- New Entry No. 47 inserted for giving exemption to Services by way of right to admission to,- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet; (ii) recognised sporting event.
- Definition of recognized sporting event added through clause (zab) of paragraph 2 relating to definitions.

NOTIFICATIONS & CIRCULARS

- The Central Government vide notification No. 13/2015-ST dated 19.05.2015 has amended the service tax abatement notification 26/2012-ST dated 20.06.2012 to remove the definition of Chit.
- The Central Government vide notification No. 14/2015-ST dated 19.05.2015 has appointed 01.06.2015 as the date on which various provisions of the Finance Act, 2015 shall come into force.
- The Central Government vide notification No. 15/2015-ST dated 19.05.2015 has appointed 01.06.2015 as the date on which various amendments in the Service Tax Rules, 1994 shall come into force.
- The Central Government vide notification No. 16/2015-ST dated 19.05.2015 has appointed 01.06.2015 as the date on which various amendments in the Mega Exemption Notification shall take place.
- The Central Government vide notification No. 17/2015-ST dated 19.05.2015 has exempted taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from service tax subject to certain conditions listed therein.
- The Central Government vide notification No. 14/2015-CE (NT) dated 19.05.2015 has amended the Cenvat Credit Rules 2004 w.e.f. 01.06.2015.
- The Central Government vide notification No. 15/2015-CE(NT) dated 19.05.2015 has omitted the output service of 'supply of manpower for any purpose or security services' for the purpose of claiming refund of unutilized Cenvat Credit.
- CBEC vide Notification No. 46/2015-Cus(NT) dated018.05.2015 has made amendments in Shipping Bill (Electronic Declaration) Regulations, 2011.

QUIZ!!!

1. What is the maximum rate of penalty imposable under section 76 of Finance Act, 1994 w.e.f 14.05.2015?

2. Which bond is used for dispatch of excisable goods removed for export without payment of duty?

3. What is the rate of abatement in service tax on transport of goods by vessel?

(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- **Tea, Tobacco Products**
Reply to Q2– **40%**
Reply to Q3– **False**

Reply given by:

1. Ishika Sharma, sharma.ishika@yahoo.co.in
2. Chirag Bhotika, chirag.bhotika@gmail.com
3. Nikita Agarwal, sweetniksforu@gmail.com

CASE UPDATES

1. **Delhi Transport Corporation vs Commissioner of Service tax [2015 (38) S.T.R. 673(Del)]**

Issue: -Whether service tax liability can be transferred to third party by a contractual agreement?

Decision-The Hon'ble Delhi High Court ruled that the service tax burden can be transferred by contractual agreement to the other party. But on account of such contractual arrangement, the assessee cannot ask the revenue to recover the tax dues from a third party or wait for discharge of liability by the assessee till it has recovered the amount from its contractors. The appellant is a public sector undertaking and it should have been more vigilant in compliance with its statutory obligations. It cannot take cover under the plea that contractors engaged by it agreed to bear the burden of taxation; there was no need for any further action on its part. For purposes of the taxing statute, the appellant is an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

2. **Agarwal Motors vs Commissioner of Central Excise, Satna [2015 (38) S.T.R. 775 (Tri. - Del)]**

Issue: - Whether service tax applicable when service is not completely provided and amount paid for the service under the agreement is returned to the service provider?

Decision-the Hon'ble Delhi CESTAT observed that the rejection of commission is only in respect of those services which were not fully completed by the appellant. The commission is to be received by the assessee only on full completion of the services. There is also no indication in the agreement so as to show that the rejection commission is penal in character. Relying on the ratio of the judgement of Hon'ble Punjab & Haryana High Court in the case of CCE&ST, Jalandhar vs Janta Travels Pvt. Ltd. [2009 (13) S.T.R. 488] wherein it was held that the service of air travel agent having been provided but consequently ticket having been cancelled and the commission returned, is required to be treated as if no service was rendered; allowed the appeal with consequential relief.

3. **Unique Structures & Towers Ltd. Vs Commissioner Of C. Ex., Raipur [2015 (318) E.L.T. 523 (Tri. - Del.)]**

Issue: -Whether interest shall be payable from date of clearance of goods or from date of invoices raised for differential price as a result of price escalation clause?

Decision-The Hon'ble Delhi CESTAT, relying on the judgment of Hon'ble Supreme Court in ***CCE* v. *International Auto Limited*** **[2010 (250)** E.L.T. **3 (S.C.)],** held that merely because the differential amount of duty is ascertained subsequent to the date of clearance, the due date of payment of duty never stands changed or extended and it would always relate to the date of removal of goods. Further, the expression FOR under Rule 7(4) of Central Excise Rules, 2002 refers to the month for which the amount is determined pursuant to the finalization of price and hence interest liability would commence from the month succeeding the day on which the duty was due and payable in relation to the goods cleared.

4. **Commissioner Of C. Ex., Raipur Vs Surya Alloys Industries (P) Ltd [2015 (316) E.L.T. 104 (Tri. - Del.)]**

Issue: -Whether cost of inspection was includible in assessable value when goods could not be sold without such inspection?

Decision-The Hon'ble Delhi CESTAT held that sale of "Inserts" was to Railways or to others on behalf of Railways and inspection by RITES was a necessary condition of sale. It was not in the nature of secondary or optional inspection and therefore the Commissioner (Appeals) was not right in holding the inspection charges to be not includible in the assessable value on that ground. As a matter of fact, the said goods could not be sold without the said inspection by RITES and therefore cost of inspection is clearly includible in the assessable value under Section 4 of the Central Excise Act, 1944.

FREQUENTLY ASKED QUESTIONS

"It is better to create than to learn! Creating is the essence of life"
- Julius Caesar

Query 1: Mr. X is a tour operator who makes payment for hotels, ticket costs or transporter's charges to transport operators on behalf of its customers after collecting due amount from them. Whether such income is to be included while calculating his gross receipts for determining basic exemption limit of Rs. 10 Lakhs?

Reply by e-newsletter team: With the enactment of the Finance Act, 2015, the definition of Consideration in Clause (a) of the explanation to Section 67 has been amended to 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"*. In our view, the reimbursable expenses incurred by the tour operator are covered by the aforesaid inclusion. Hence, it appears that the same shall form part of consideration while calculating the gross receipts of the tour operator for the purpose of determining basic exemption limit of Rs. 10 lakhs.

Query 2: M/s ABC has Service tax Registration since the year 2003 but its gross receipts have not crossed the SSI exemption limit in any Financial year so they haven't filed any service tax return since past 9 years. But now they want to file their returns on Regular basis. Considering the fact that their Gross receipts is still below the SSI Exemption limit Rs. 10,00,000/-, how should they regularize their procedures in relation to Service tax?

Reply by e-newsletter team: In our view, if the assessee has taken service tax registration, they should file service tax returns irrespective of the SSI exemption limit. The assessee may file nil returns, i.e. taxable value is nil. In our view, M/s ABC should file nil returns from the period 2010-11 onwards as the period before that is already time barred. The department may demand late fee @ Rs. 20000/- per return. However, as the returns are nil returns, ABC Ltd is not an assessee liable to pay service tax, hence in our opinion, late fee is not payable.

M/s D A V A & ASSOCIATES
(Chartered Accountants)

'Mercantile Building';
Block-B, Room No.-8; 1st Floor,
9, Lal Bazar Street, Kolkata-700001
Office Ph: (033) 22313940/ 40046893
Mobile: +91 9874355518/9433135518
E-mail id: davakolkata@gmail.com
Web: davaassociates.com
Other offices at: Chandrapur, Delhi & Kolkata

Editor	**Editorial Team**
CA Narayan Kr. Agarwal	**Ms Stuti Tibrewal** **Ms Richa Keshari** **Ms Minakshi Agarwal**

In case of any queries/feedback/suggestions, mail to us on davaidtexpress@gmail.com