40
Rs. 5/-

Tax Talk

The Monthly Service Tax Bulletin

Editorial

Happy CA Day!!! Today CA Profession in our country has completed 66 years of its existence. I urge all my professional colleagues to work towards the betterment of our profession keeping in mind that we all are jointly responsible for the reputation of our profession.

Monsoon brings happiness among all by one or other means. The warning given by the Metrology Department regarding weak monsoon is a cause of concern for all of us because the economy of the country is largely dependent on the monsoon. People praying that the predictions should fail and the same seems to be working so far, as can be seen from the rainfall recorded till date.

At the same time bad days of the Indian economy seems to have moved away as a result of rigorous attempts by the Central Bank in the form of interest rates regulation and effective check on the inflation rates. The delighted Finance Minister in his address to the International Monetary and Financial committee expressed his glee on stating that the Indian economy is on the path of resurgence as a growth rate of 7.4% has been attained for the first three quarters of the fiscal year 2014-15.

Indirect Taxes constituting Customs, Central Excise and Service Tax have shown a tremendous growth in the past two months and an astonishing growth rate of in and around 15% has been reported. Such escalation in the revenue augers well for the Government exchequer.

The joy of the economy's resurrection has been marred by the controversies circling around the impending introduction of the GST. The political rivalry and differences between the BJP and the Congress have again made their evil presence felt, by casting doom over chances of introducing GST by the beginning of the next fiscal year. In the present scenario, the chances of the GST bill getting its mandate in the upcoming monsoon session are questioned. At the same time States want full compensation for five years in place of the current provision in the Bill which provides for 100% compensation for three years, 75% for the fourth year of GST implementation and 50% for the fifth year. States have also asked for entry taxes and purchase taxes not to be subsumed in GST and for fresh taxation rights on tobacco over the GST rate.

Over the period number of changes have taken place in Service Tax procedures. A bird's eye view of the procedures under the Finance Act, 1994 and the rules made thereunder viz, Service Tax rates, Rate of interest, Registration Procedure, etc has been presented in a tabular form on Page 2 of this edition.

The Finance Act, 2015 has amended several sections governing the Settlement Commission. Recently CBEC issued a letter to All the Chief Commissioners of Central Excise & Service Tax and All Directorate General to promote the Settlement Commission as it is not used even after 15 years of applicability to Service Tax cases. We feel that the main reason for failure of Settlement Commission is not the lack of public awareness rather the way Show Cause Notices are issued. Largely show cause notices are issued taking into consideration maximum amount which can be taxed. Hence the assessees are not left with anything to declare. The same has been discussed on Page 3 along the side of GST updates.

We hope this newsletter will add some value and prove to be beneficial to the readers. Soft copy of the newsletter is also available on www.gstpeople.com. 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/ Quarter ending June 2015 (all assessees)	E-Payment	6th July, 2015
RETURN	**FORM**	**DUE DATE**
Revised return for the half year October 2014 - March 2015	ST-3	90 days of filing of original return
Return for the Quarter April 2015 - June 2015 (For a SEZ Unit or a Developer)	A-3 (Physical)	30th July, 2015

Service Tax Obligation Table

SERVICE TAX RATES				
Period	**Basic Rate**	**EC**	**SHEC**	**Effective Rate**
01/07/1994 to 13/05/2003	5%	Nil	Nil	5%
14/05/2003 to 09/09/2004	8%	2%	Nil	8%
10/09/2004 to 17/04/2006	10%	2%	Nil	10.2%
18/04/2006 to 10/ 05/2007	12%	2%	1%	12.24%
11/05/2007 to 23/02/2009	12%	2%	1%	12.36%
24/02/2009 to 31/03/2012	10%	2%	1%	10.30%
01/04/2012 to 31/05/2015	12%	2%	1%	12.36%
01/06/2015 onwards	14%	Nil	Nil	14%
Swachh Bharat Cess has been kept in abeyance till further notice.				

RATE OF INTEREST		
Rates applicable during the Period	**Value of taxable services > 60 lakh in the preceding year**	**Value of taxable services ≤ 60 lakh in the preceding year**
1st July 1994 to 15th July 2001	1.5% per month or part thereof	
16th July 2001 to 15th Aug 2002	24% per annum	
16th Aug 2002 to 9th Sept 2004	15% per annum	
10th Sept 2004 to 31st March 2011	13% per annum	
1st April 2011 to 30th Sept 2014	18% per annum	15% per annum
1st October 2014 onward		
- For the first 6 months	18% per annum	15% per annum
- For the period beyond 6 months and up to 1 year	24% per annum	21% per annum
- For the period beyond 1 year	30% per annum	27% per annum

REGISTRATION		
Obligations	**Time Limit**	**Prescribed Form**
Application for Registration	Within 30 days from the date on which tax is levied or business is commenced	Form ST- 1
Certificate of Registration	Granted online within 2 days from the date of application. (Documents must be submitted within 7 days of application)	Form ST- 2
Amendment in ST-1 information	Within 30 days from the date of such change in information	Form ST- 1
Revocation of Certificate	May be revoked, if documents not received by the officers of the C. E. - S. T. within 15 day of making the application	

APPEAL FEES (for Tribunal)	
Quantum of Service Tax, Interest and Penalty demanded	**Amount of Fee Payable**
Rs.5,00,000 or less	Rs. 1,000
More than Rs.5,00,000 but not exceeding Rs.50,00,000	Rs. 5,000
More than Rs.50,00,000	Rs.10,000
Any other application (like Condonation of Delay, Rectification of Mistake)	Rs. 500

RETURN			
Obligations	**Frequency**	**Time Limit**	**Form**
Service Tax Return (for all assesses)	Half-yearly	Within 25 days of end of each half year.	ST-3
Service Tax Return for Input Service Distributors.	Half-yearly	Within 30 days of end of each half year.	ST-3
Filing of revised service tax return	If required	Within 90 days of filing of original return	ST-3

SERVICE TAX RETURN DUE DATE CHART 2012-13 ONWARDS	
Return Period	**Due Date**
April 2012 to June 2012	25th Nov 2012
July 2012 to Sept 2012	30th April 2013
Oct 2012 to March 2013	10th Sept 2013
April 2013 to Sept 2013	25th Oct 2013
Oct 2013 to March 2014	25th April 2014
April 2014 to Sept 2014	14th Nov 2014
Oct 2014 to March 2015	25th April 2015

PAYMENT		
Obligation	**Frequency**	**Time Limit**
Payment for all assessees other than individual, proprietorship firm, partnership firm & LLP	Monthly (e-payment)	By 6th of the following month. For the month of March by 31st March
Payment for individual proprietorship firm, partnership firm & LLP	Quarterly (e-payment)	By 6th of the following month of the quarter ended. For March quarter by 31st March

LATE FEES FOR FILING THE RETURN	
For delay upto 15 days from the due date	Rs. 500/-
For delay beyond 15 days not later than 30 days	Rs. 1,000/-
Beyond 30 days	Rs. 1,000 + Rs. 100 per day (subject to a maximum amount of Rs 20,000/-)

TIME LIMITS FOR THE SERVICE TAX APPEAL FORMS		
Appeal Forms	**Whom**	**Time Limit**
Form ST- 4 [Form of Appeal to Commissioner of Central Excise (Appeals)]	Any person aggrieved by the order passed by an Adjudicating Authority subordinate to the Commissioner.	Within 2 months of receipt of such order.
The Commissioner (Appeals) have a power to condone the delay upto 1 month		
Form ST- 5 [Form of Appeal to CESTAT]	Any person aggrieved by the order passed by a Commissioner or Commissioner (Appeals).	Within 3 months of receipt of such order.
Form ST- 6 [Form of Memorandum of Cross Objections to CESTAT]	If one party file an appeal in Tribunal than other part has to file Memorandum of Cross Objection.	Within 45 days of receipt of notice.
The CESTAT may condone any delay without time restriction.		

Settlement Commission

The Customs, Central Excise and Service Tax Settlement Commission was initially set up by section 32(1) of the Central Excise Act, 1944 and was subsequently made applicable to customs and service tax by parallel sections of section 127 of the Customs Act, 1962 and section 83 of the Finance Act, 1994. The commission was set up for the quick and easy settlement of disputes of high revenue stake to avoid prolonged litigation. This was done to save time and energy of both the litigant and the Department. The main attraction of approaching the settlement commission is that it can grant or reduce penalty, fine or interest along with power to grant immunity from prosecution to the assessee.

Recently, CBEC has issued a circular F. No 275/72/2014-CX.8A dated 19th June 2015 to all the Chief Commissioners of Custom, Central Excise & Service Tax and all Directorate General with the aim of promoting and creating awareness of the provisions relating to Settlement of Cases through Settlement Commission, by informing the noticee about the said provisions by a follow up letter after issuance of Show Cause Notice.

It has been noticed by CBEC that even after more than fifteen years of operation scheme of settlement of cases through Settlement Commission has not yielded the desired results and very miniscule percentage of all the show cause notices issued are taken up by the assessee's for settlement. CBEC understands that one of the reasons for not many assesse's opting for the said scheme may be lack of awareness of the scheme amongst them.

To encourage voluntary compliance and for settlement of the disputes by making use of the said scheme, the Board has now directed that immediately after issuance of Show Cause Notice, a letter should invariably be written to the noticee informing him about the scheme of the settlement. The text of the said letter as annexed to the circular has been produced here.

Time will tell us about the result of this initiative. However, we feel that the main reason for failure of Settlement Commission is not the lack of public awareness, rather the way Show Cause Notices are issued. Most of the show cause notices are issued taking into consideration maximum amount which can be taxed. Hence the assessees are not left with anything more to declare. It is pertinent to mention here that an assessee can approach the commission only if the additional amount of tax accepted by the applicant in his application apart from other condition to be satisfied. This proves to be impractical and discourages the assesses from opting for this scheme.

F.No……………..………………

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise & Customs

(Commissionerate of Service Tax …………)

Dated ....

To

M/s . ...…………………

……………………………………..

Sub: **SCN dated……vide F. No./C. No………..reg.**

Please refer to the subject Show Cause Notice issued to you.

2. In this context, your attention is drawn to the legal provisions relating to Settlement of Cases, as available under Chapter V of the Central Excise Act, 1944 which is made applicable by Section 83 of the Finance Act, 1994 to the cases of Service Tax.

3. In case you are eligible to avail the facility of settlement of the case as per Section 83 of the Finance Act, 1994, and interested in the same, you may apply to the Settlement commission as per prescribed procedure and also inform the same to the Adjudicating Authority

Yours sincerely,

Encl: as above

Superintendent of Service Tax,

……………… Commissionerate

Ph…………………..

GST update

As days are passing by, all eyes are set on fate of Goods and Service Tax (GST) implementation from 1st April, 2016 which is totally dependent on the report of the parliamentary committee that would be presented in the monsoon sessions of the Parliament. The political differences among the Ruling and the opposition parties have been a major setback for reaching an collective consensus. As of now, it seems as if the opposition is least interested in gifting the whole nation with the most dynamic tax reform of all times.

The Goods and Services Tax Bill (122nd constitutional amendment) requiring two-thirds majority in both the Houses — would not be supported by the Congress unless its demands are met. The Congress has refused to support the Bill in its present form. It wants the ceiling of GST to be reduced to 18 per cent from 26 per cent. It wants the Centre to remove the proposed one per cent extra tax on GST for "manufacturing states" and include tobacco and electricity under the legislation. The Congress also wants clarification on dispute resolution mechanism, among the States and between the Centre and States.

Meanwhile, the states have come out with a fresh set of demands regarding the structure of the proposed tax as well as the transitory compensation arrangement.

The Central Government and the State Committee are putting their best effort to implement the GST from the set deadline. As the members of the state committee are travelling different states to discuss their concerns and getting the solutions, whereas the Central Government has formed two committee to look forward to the implementation of the GST. One committee has been formed under the Co-Chairmanship of Additional Secretary, Department of Revenue and Member Secretary, empowered Committee of State Finance Ministers. This committee shall monitor the progress of IT preparedness of GSTN/CBEC/tax authorities, finalization of reports of all the sub-committee constituted on different aspects relating to mechanics of GST and drafting of CGST, IGST and SGST laws/rules. Another committee has been formed under the chairmanship of the Chief Economic Advisor, Ministry of Finance to recommend possible tax rates under GST that would be consistent with the present levels of revenue collection of Centre and States.

Frequently Asked Question

Q **Whether out of pocket expenses or reimbursable expenses incurred by the service provider in the course of providing the taxable services has to be included in the value of taxable services?**

A The above question was examined by the Hon'ble Delhi High Court in the case of **Intercontinental Consultants & Technocrats (P.) Ltd. v. Union of India [2012] 28 taxmann.com 213**, where the petitioner filed a writ petition before the High Court for quashing the show cause notice issued by the Service Tax Department for recovery of Service Tax on amount received as reimbursement of expenses under Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 (hereinafter 'the Rules').

The Hon'ble Delhi High Court while deciding the petition held as follows:

- Rule 5(1) of the Rules is ultra vires to the section 66 and section 67 of the Finance Act, 1994 since it travels beyond the scope of the aforesaid sections.
- The expenditure or costs incurred by the service provider in the course of providing the taxable service can never be considered as part of the gross amount charged by the service provider for the services provided.

Though the Hon'ble Delhi High Court decision is in favour of the assessee, the department has filed an appeal to the Hon'ble Supreme Court against the decision of the High Court which is pending as on date.

The above decision of Hon'ble Delhi High Court has been overcome by the budget 2015. The definition of "consideration" in explanation to the section 67 has been enlarged [w.e.f 14.05.2015]

The enlarged explanation (a) of section 67 of the Finance Act, 1994 can be read as follows:-

"Consideration" includes:-

(i) any amount that is payable for the taxable services provided or to be provided.

(ii) 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.

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent get such ticket.

Thus, after the amendment there is no doubt that any amount received by the service provider on any account for service provided by him or reimbursement from service recipient, shall form part of consideration and shall be liable to service tax. Although payment to pure agent will still be out of service tax net.

However, the inclusion of reimbursable expenditure for the period prior to the above amendment is yet to be decided by the Hon'ble Supreme Court.

BOOK POST

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor
4, B.B.D. Bag (East) Kolkata - 700 001

Owner: M/s Goyal Tax Services Pvt. Ltd., **Printer & Publisher:** Mrs. Reena Goyal Published from Stephen House, Room No. 64, 4 B. B. D. Bag (East), 4th Floor, Kolkata-700 001 And **Printed from** M/s CDC Printers Pvt. Ltd., Tangra Industrial Estate-II (Bengal Pottery), 45, Radhanath Chowdhury Road, Kolkata - 700 015. **Editor:** CA Sushil Kumar Goyal.

Date of Publication : 1st July 2015

Postal Registration No. KOL RMS/465/2015-17

Registration under RNI No. WBENG/2013/55099