INDIRECT TAX EXPRESS

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

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FROM THE EDITORIAL TEAM

Manual Scrutiny of the Service Tax Returns of the Small Assessees - Few Precautions to be Taken

The CBEC introduced self-assessment in respect of central excise in 1996 and in respect of service tax in 2001. With the introduction of self-assessment, the department also provided for a strong compliance verification mechanism with three important prongs—Scrutiny of Returns/ Assessments, Audit and Anti-Evasion. Recently, The Central Board of Excise and Customs came up with **Circular No. 185/4/2015-ST 30th June, 2015** to lay down the revised guidelines for detailed scrutiny of ST-3 Returns to be followed by the Revenue **w.e.f 01.08.2015**. This guidelines seeks to strengthen compliance and verification of Small taxpayers, who usually do not fall within the ambit of service tax audits and whose total tax paid (Cash + Cenvat) for the **F.Y. 2014-15** is below **Rs. 50 lakhs.**

Earlier, the board, vide **Circular No. 113/07/2009-ST** dated **April 23, 2009,** had laid down the procedure for carrying out detailed scrutiny of Service Tax Returns and had circulated a Return Scrutiny Manual for Service tax. However, Automation in Central Excise and Service Tax (ACES) system was slammed by CAG's report on Indirect Taxes in 2011-12 as it identified functional problem in 112 ranges out of the 196 test checked ranges. Certain recommendations were made by CAG which has been integrated in the revised guidelines along with necessary revisions needed after introduction of Point of Taxation Rules, 2011 and advent of Negative List based comprehensive taxation of services in July, 2012. The crux of which are as follow:

Selection of Returns for Detailed Scrutiny

- A two part system of return scrutiny is envisaged comprising of a preliminary scrutiny which would be online and a detailed manual scrutiny of select returns based on specified risk parameters & risk tools.

- The selection of the assessees for the purpose of manual scrutiny would be made under three bands where the Service Tax is paid up to Rs 10 lakh, Rs 10-25 lakh and Rs 25-50 lakh in 2014-15. The assessees who have been selected for audit or audited recently in past 3 years will not be taken up for detailed scrutiny. In certain cases returns of the assessee who have paid service tax more than 50 lacs may be scrutinized. However, they will not subjected to both audit and detailed manual scrutiny.

Methodology

- Detailed scrutiny will be conducted by range superintendent and inspectors under the supervision of AC/DC after compiling and studying information about assesse available from the Assessee Master Information.

- It will be primarily based on assessment-related documents like agreements/contracts and invoices obtained through requisition rather than through visit.

Reconciliation of information furnished in the ST-3 return with ITR Form Nos. 4, 5, 6 and 26AS and any third party information made available.

- Scrutiny process of an assessee will be completed in a period not exceeding 3 months.

Inside this issue:

GST NEWS

- CNBC–TV18 reported that the multi-party Select Parliamentary panel on Goods and Services Tax (GST) has finalized its report, which will be submitted to the Parliament on July 17, 2015. Congress wanted the government to do away with the proposal of an additional levy of 1% state-level tax over and above GST, but it was learnt that panel members have agreed to not push for this demand.

- The Times of India reported that Trinamool Congress, on 12.07.2015 (Sunday), came out in strong support of the government's ambitious GST bill, which is being scrutinized by a parliamentary committee, saying that measure was "good for the states, good for the Centre and good for the nation".

IDT NEWS

Business Standard reported that the Centre collected Rs. 57,357 crore from indirect taxes in June this year, up 33.3% compared to Rs. 43,025 crore a year earlier.
This was aided by a 67.4% increase in excise duty collections. The mop-up, particularly on the excise duty front, fuelled a 37% rise in indirect tax collection during the quarter ended June at Rs 1.54 lakh crore, compared with Rs. 1.12 lakh crore during the year-ago period.
In June, customs duty collection rose 21.4% to Rs. 17,094 crore, while service tax was up by 14.2% at Rs. 17,546 crore.

- In case where detailed scrutiny results in detection of default in payment of service tax, ST-3 returns of past periods will also be verified.

The purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee which includes checking the taxability of the service, the correctness of the value of taxable services, effective rate of tax after taking into account the admissibility of an exemption notification, abatement, or exports, if any etc.

Since, the focus is on the detailed manual scrutiny of the returns of those service tax assessees who are not being audited, it would be prudent for small businesses to take necessary precautions in relation to accounts and documents so that process of scrutiny does not become a painful exercise and results in unfair tax demands. In particular following precautions may be taken by the small assessees:-

- Pay service tax liability on output service and reverse charge mechanism on due date and under proper tax codes. File service tax returns on time;
- Pay interest and late fee in case of delayed compliances;
- Ensure correctness while availing/ utilizing cenvat credit, abatement, and maintain proper records for it;
- Ensure invoices of input services contain the requisite details as per Rule 4A of the Service Tax Rules, 1994;
- Make sure that services are valued properly for calculation of service tax liability;
- Properly maintain the contracts/ agreements entered into in respect of taxable as well as exempt services provided;
- Ensure that figures as per service tax returns and accounts are matching and in case of differences, always keep proper reconciliation explaining the reasons for differences.

NOTIFICATIONS & CIRCULARS

- CBEC, vide **Circular No. 185/4/2015 – Service Tax** dated **30.06.2015**, has issued revised guidelines for carrying out detailed manual scrutiny of service tax returns w.e.f. 01.08.2015.

- CBEC, vide **Notification No. 18/2015-Central Excise (N.T.)** dated **06.07.2015**, has specified certain conditions, safeguards and procedures for issue of invoices, preserving records in electronic form and authentication of records and invoices by digital signatures.

- Central Government, vide **Notification No. 31/2015-Customs (ADD)** dated **09.07.2015**, has re-imposed anti-dumping duty on imports of steel and fibre glass measuring tapes and their parts and components, originating in or exported from the People's Republic of China, at rates as specified for a period of five years.

- Central Government, vide **Notification No. 32/2015 Customs (ADD)** dated **10.07.2015** has re-imposed anti-dumping duty on imports of Phenol, originating in or exported from South Africa, at rates as specified for a period of five years.

- Central Government, vide **Notification No. 33/2015-**, extended anti-dumping duty on imports of Glass Fibre and articles thereof originating in, or exported from People's Republic of China upto 13.06.2016.

- CBEC, vide **Notification No.65/2015-Customs (N.T.)** dated **30.06.2015**, has amended Notification no. 36/2001-Customs (N.T.) dated 03.08.2001 to revise tariff values for import of Edible oil, Brass, Poppy seed, Areca nut, gold and Silver.

QUIZ!!!

1. As per Central Excise Rules 2002, what is the due date for submission of Annual Financial Information Statement in Form ER-4?

2. What is the maximum amount of penalty that can be imposed in case of delay in taking service tax registration under Finance Act 1994?

3. As per Customs Act, 1962, what is the maximum period allowed to an importer for payment of duty after the bill of entry has been returned to him?

(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- **2,00,000/-**
Reply to Q2– **45,000/-**
Reply to Q3– **3 months**

Reply given by:
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CASE UPDATES

1. **Shri Chatushringi Seva Samittee vs. Commissioner of C. Ex., Pune-III [2015 (39) S.T.R. 169 (Tri. – Mumbai)]**

Issue: - Whether stalls let out for business during festivals can be covered under the category of 'Mandap Keeper service' for the purpose of chargeability of service tax?

Decision- The Hon'ble Mumbai CESTAT confirmed the demand under "mandap keeper service". As per the provisions of Sections 65(67) and 65(105) of the Finance Act, 'mandap keeper' means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function. In the present case, the appellant stated the facts that certain stalls are allotted to different persons for selling different items such as toys, garlands, flowers, food, etc. during festivals and also produced evidence in support of this claim. Thus, the above activity has been rightly covered under the scope of 'mandap keeper service' for charging service tax.

2. **Commissioner of C. Ex. & S.T., LTU, Chennai vs. Rane TRW Steering Systems Ltd. [2015 (39) S.T.R. 13 (Mad.)]**

Issue: - Whether it was justified to include 'Housekeeping and Landscaping Service' under the scope of "input services" in terms of Rule 2(1) of the Cenvat credit Rules, 2004?

Decision- The Hon'ble Madras High Court relied upon the decision in case of *Commissioner of Central Excise, Bangalore-II vs. Millipore India Pvt. Ltd.* wherein it was held that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products and the same would fall within the ambit of "input services". Accordingly, the substantial question of law was answered in favour of the assessee and thus he was entitled to claim its benefit.

3. **Commissioner of C. Ex., Belapur vs. Sharp Batteries & Allies Inds. Ltd. [2015 (318) E.L.T. 506 (Tri. – Mumbai)]**

Issue: - In cases where buyer takes the delivery of the final product i.e. storage tank from the godown of the respondent, whether the charges for transportation of storage tanks from factory to godown are includible in the assessable value or not?

Decision-The Hon'ble Mumbai CESTAT held that as the goods have been cleared to the customers from the godown of the respondent, the transportation charges being paid for transportation of the goods from factory to the godown are includible in the assessable value. In these circumstances, it is immaterial whosoever has paid the transportation charges and the same are includible in the assessable value as the goods have been cleared to the customers from the godown only. Therefore, the impugned order was not sustainable on merits.

4. **Berger Paints India Ltd. Vs Commissioner of Central Excise [2015 (318) E.L.T. 465 (Tri. – Mumbai)]**

Issue: - Whether excise duty is payable on raw materials, inputs and packing materials lying in the store of a manufacturer, lost due to natural causes or unavoidable reasons like fire?

Decision- The appellant had applied for remission of duty on all finished goods destroyed in the fire including raw materials/packing materials/WIP/intermediate goods. Department claimed that assessee had contravened the provision of Rule 3 of Cenvat Credit Rules, 2004 as they availed and utilized the Cenvat credit on such input which have not been put to use in the manufacture of excisable goods. The Hon'ble Mumbai CESTAT held that from a plain reading of Rule 21 of the Central Excise Rules, 2002, it is evident that the Commissioner may remit the duty payable on such goods on which duty is payable in respect of outputs of a manufacturer. There is no mention of inputs under the rule, which are lying unused as not subjected to manufacture, thus no duty is payable. The appellant manufacturer has to pay duty only on its output when they are removed, and in case of loss in fire, which amounts to removal. The provisions of remission has been made for granting adequate relief for loss suffered, so as to give the relief to the assessee from further burden of duty. Therefore, the demand of duty was upheld in respect of raw materials and packing materials (lying in store).

FREQUENTLY ASKED QUESTIONS

"An ounce of practice is worth more than tons of preaching."

- Mahatma Gandhi

Query 1: Mr. XYZ is trader of computer and its peripherals. It purchases goods from distributors/vendors of different companies and sell it in retail. It receives incentives as a percentage of sales for achieving the target sales under different schemes of different distributors. Whether such incentive is liable service tax?

Reply by e-newsletter team: Where the goods are purchased outright from the vendors or distributor and sold in retail, it is a trading activity on principal to principal basis and no service is involved. The incentive received should not be considered as commission but a form of trade discount for purchasing specified quantity of goods. Therefore service tax is not leviable on incentives received by the company for achieving the target sales

Query 2: M/s ABC is a registered dealer in West Bengal. He sells goods on approval basis to M/s XYZ. Whether liability to pay sales tax arises when goods sold on approval basis are dispatched?

Reply by e-newsletter team: A registered dealer is required to pay sales tax on the sale of goods made by him. A transaction can be considered sale only when, transfer of property in goods take place but wherein the transfer of the property in goods is to take place at a future time or subject to fulfilment of some conditions, the contract is agreement to sale. Sale of goods on approval basis is also an agreement to sale, wherein the property passes to the buyer when he signifies his approval or acceptance to the seller or the time limit fixed for returning the goods has expired. Therefore, sales tax is payable only when goods are approved by buyer or time limit for returning the goods has lapsed, not at the time of dispatch of goods.

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