Rs. 5/-

Tax Talk

The Monthly Service Tax Bulletin

Editorial

Remembrance of the good done by those we have loved is the only consolation of their loss. A sad day for all of us dawned upon with the loss of the Past President of India, Shri A P J Abdul Kalam. He is an inspiration for one and all and his life a milestone and guidance for ideal utilization of our resources and framing of aims and goals to lead a successful life. Although an incident of deep grief, his death is as worthy a celebration as was his life. With his shoes on and performing the function he craved for, the Bharat Ratna left for heavenly adobe leaving us all with a motivation and incitement to strive for the best. You are and shall always be remembered sir!

The CBEC has prescribed revised guidelines for detailed scrutiny of ServiceTax Returns (ST-3 Returns) to be followed by the department with effect from 1st August, 2015. The prescribed guidelines provide for purpose and methodology of Preliminary Online Scrutiny, scope of Detailed Manual Scrutiny, criteria for Selection of Returns for detailed scrutiny and documentation procedures to be followed by the department. The circular mentions that the main focus of detailed scrutiny procedure would be on small assessees whose total tax paid for the financial year 2014-2015 is below Rs.50 lakhs. The detailed guidelines as per the circular are discussed at Page – 2.

All the assessees should now be much more cautious and aware while filing service tax returns since you may be subject to detailed scrutiny by the service tax department even if you are small service provider and not covered under audit procedures of the department.

With the budget announcement this year, Rule 4C of the Service Tax Rules, 1994 was introduced to prescribe provision for issuing digitally signed invoices, bill or challan along with the option of maintaining of records in electronic form and their authentication by means of digital signatures effective from 01.03.2015. The CBEC has specified the conditions, safeguards and procedures for issue of invoices, preserving records in electronic form, authentication of records and invoices by digital signatures. These procedures are discussed at Page – 5.

On the GST front, the fate of the Constitutional Amendment Bill is yet to be decided by the Rajya Sabha. The Bill was referred to the Select Committee in the last session of the Parliament and its report was awaited. With all political hints moving towards the positive end, the select committee submitted its report on the Constitution (One Hundred and Twenty Second Amendment) Bill, 2014. The recommendations of the committee have been adopted without any contrary views as of now but the Rajya Sabha's discussion on the bill shall be a turning point on the whole exercise. The key features of the report are discussed in GST Column at Page – 5.

The date of increase in service tax rate being notified as 01.06.2015, various stakeholders at large were instilled with confusions in respect of certain services. Tax on restaurant services has an effect on consumers at large and confusions and ambiguities are much more in this area. In the last month, the board clarified that there has been no change in the valuation rules in respect of restaurant services and only the consequential effect of increase in rate of service tax from 12.36% to 14% affects the rate of tax in restaurants and accordingly the effective rate on such establishments has increased from 4.9% to 5.6% of the total amount charged.

Friends as I wish to contest Central Council Election of ICAI and Election code of conduct will be applicable and restriction will be imposed. So I am seeking your blessing and support in the Election through this Issue of bulletin being last issue before election code.

Sushil Goyal.

CA Sushil Kr Goyal

DUE DATES		
PAYMENT	**FORM**	**DUE DATE**
Payment for Month ending July, 2015 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-Payment	6th August, 2015

Vol: 3 Issue : 5 August 2015

Scrutiny of Service Tax Returns

In order to strengthen compliance and verification process with the advent of negative list based comprehensive taxation of services and introduction of Point of Taxation Rules, 2011; CBEC has revised the guidelines for detailed scrutiny of Service Tax Returns (ST-3 Returns) prescribed earlier via circular no. 113/07/2009-ST dated 23.04.2009. The revised guidelines for detailed scrutiny of Service Tax Returns are to be followed by the department with effect from 1st August, 2015.

A two part system of return scrutiny has been envisaged - a preliminary scrutiny which would be online and a detailed manual scrutiny of selected returns based on specified risk parameters and the risk tools. The following is the gist of guidelines issued for scrutiny of the service tax return:

A. Preliminary Online Scrutiny:

The preliminary scrutiny of returns has been largely automated through the Automation in Central Excise and Service Tax (ACES) system.

a. *Objective & Scope*

- Ensuring the completeness of the information furnished in the return,
- Arithmetic correctness of the amount computed as tax and its timely payment,
- Timely submission of the return and identification of non-filers and stop-filers.

b. *Selection*

All returns are subject to preliminary online scrutiny. The returns having certain errors will be marked for Review and Correction (RnC) and accordingly will be processed by the Range Officers.

B. Detailed Manual Scrutiny

A Return Scrutiny Cell would be created in the Commissionerate's Headquarters. They shall maintain the records of the assessees and the returns which are selected for detailed scrutiny and also the result thereof.

a. *Objective & Scope*

The purpose of detailed manual scrutiny of returns is to ensure the correctness of the assessment made by the assessee. This shall include:

- Checking the taxability of the service,
- Ascertainment of correctness of the value of taxable services in terms of Section 67 of the Finance Act, 1994 read with the Service Tax (Determination of Value) Rules, 2006
- Verifying the effective rate of tax after taking into account the admissibility of exemption notification, abatement, or exports, if any;
- Ensuring the correct availment/utilization of CENVAT Credit in terms of the CENVAT Credit Rules, 2004, etc.
- To inspect the financial records of the assessee.
- To identify non-compliance issues.
- To evaluate the internal control system of the assessee

b. *Selection*

- Assessees whose total tax paid (CENVAT + Cash) during the financial year 2014-15 is less than Rupees Fifty Lakhs.
- Assessees who have been selected for audit or have been audited in the past three years will not be taken up for detailed scrutiny.
- Assessee who has paid service tax in excess of Rupees Fifty Lakhs can also be selected for detailed scrutiny at the discretion of Chief Commissioner.

c. *Methodology*

- Before initiating return scrutiny, the assessee must be given prior intimation of at least fifteen days and the purpose of the exercise must be spelt out in the intimation letter.
- The Range should compile the Assessee Master Information.
- The checklist has been prescribed for carrying out detailed manual scrutiny of selected ST-3 Returns. The checks have been categorized as follows:

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

(ii) Taxability in respect of services which may have escaped assessment;

(iii) Classification for the purpose of availment of abatement or exemption benefits;

(iv) Valuation and

(v) CENVAT credit availment/ utilization.

d. *Time limit*

Scrutiny process should be completed in a period not exceeding 3 months.

e. *Documentation of Findings*

- The scrutiny officer must record his findings under each of the subject of the checklist namely, reconciliation, taxability, classification, valuation and CENVAT credit.
- Under each of these heads, the officer should record any action that needs to be taken by the Range.
- The findings should clearly outline the process of scrutiny that led to the outcome.
- All scrutiny findings in a month must be discussed in a Monthly Scrutiny Monitoring Committee Meeting headed by Additional/ Joint Commissioner in charge of the Division (or in his absence by the Commissioner) where each range should present their scrutiny finding in the Scrutiny Report.

All the assessees should be much more cautious and aware while filing service tax returns since you may be subjected to detailed scrutiny by the service tax department even if you are small service provider and not covered under audit procedures of the department.

The Board Circular also states that "Even after the introduction of GST, it may be appreciated that the basic principles of scrutiny of returns and reconciliation of records would remain the same."

[Circular No. 185/4/2015-ST dated 30-06-2015]

GST update

The dream of introducing GST moved an inch closer towards the reality as the Select Committee came up with its report recommending evident changes in the Constitution (122nd) Bill, 2014. The said bill was referred to the Select Committee by the Rajya Sabha for its recommendation and the report was considered and adopted at its meeting held on 20th July, 2015.

The report of the Select Committee furnishes a detailed discussion on the 21 clauses of the Bill and the prominent recommendations at a glance are as under:

1. An issue of repetitive debate has been the insertion of new Article 269A in the Constitution of India which provides for levy and collection of GST in course of interstate trade and its apportionment between the Union and the State Governments. The members of the committee sought certain clarifications in this regards and suggested exclusion of intra-firm transactions from the purview of such levy.

   However, with due regards to the Government's view and the committees discussions, it felt that since imposition of GST on the supplies of goods and services in the course of inter-State trade would not lead to cascading of taxes, the clause for insertion of Article 269A may be adopted without any change.

2. After having deliberated on the issue of finances of local bodies, the Committee strongly felt that the revenues of local bodies need to be sustained and protected for ensuring that standards of local governance are maintained.

   In light of above, the Committee strongly recommended that the word 'band' used in the proposed Article 279A 4(e) may be defined in GST laws as: "Range of GST rates over the floor rate within which Central Goods and Service Tax (CGST) or State Goods and Services Tax (SGST) may be levied on any specified goods or services or any specified class of goods or services by the Central or a particular State Government as the case may be."

3. The Committee, having noted the point mentioned by the Department of Revenue that the GST Council shall decide only the 'modalities' to resolve disputes, did not agree to recommend inclusion of Article 279B (providing for formation of a GST Dispute Settlement Authority) as was proposed in Constitution(115th Amendment) Bill, 2011.

4. Clause 17 of the Bill in addition to other propositions, proposed omission of ineffective entries like Entry 92C. The statues, unlike human beings, do not die a natural death. The committee thus recommended that it is necessary to omit the said provision to ward of any future doubts about GST.

5. In respect of the provision of levy of 1% additional tax, the committee observed that in its present form such provision is likely to lead to cascading of taxes. Therefore, it strongly recommended that in the concerned GST law, an explanation should be given that for such purpose, the word 'supply' would mean: "All forms of supply made for a consideration".

6. As per the provisions of the Bill, while the Parliament would pass law relating to CGST, every State Government has to pass a similar law relating to SGST. In that backdrop, the Committee strongly recommended that while drafting the SGST laws due consideration to the third tier of the Government as has been guaranteed by the Constitution be given and provisions of devolution of taxes to the local bodies be made.

7. The Committee is of the considered opinion that if the GST rate is more than the service tax rate of 14%, it will further increase the cost of banking services, resulting into much higher cost of doing business in India as compared to other competing countries. The Committee hence recommended that the GST rate for banking industry should be minimum in order to be internationally competitive.

The report conferred an optimistic view with a note that "A message should go loud and clear to all that we as a country are ready to adopt tax reform of unparallel nature."

Digital Signature/E-Records

CBEC has recently issued a notification which provides the conditions, safeguards and procedures to be complied in respect of issue of digitally signed invoice along with the option of maintaining of records in electronic form and their authentication by means of digital signature. The said stipulations are as under:-

Type of Digital Signature Certificate (DSC) to be obtained

Every assessee proposing to use digital signature shall use Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India.

Prior Intimation to AC/DC

Every assessee proposing to use digital signatures shall intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least fifteen days in advance:-

a) name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;

b) name of the Certifying Authority;

c) date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority.

Intimation for Change in details

In case of any change in the details submitted to the AC/DC of Central Excise, complete details shall be submitted afresh within fifteen days of such change.

Intimation if already using digital signature

Every assessee already using DSC shall intimate to the AC/DC of Central Excise, the details as referred above (i.e. within 21.07.2015), within fifteen days of issue of this notification.

Separate electronic records for each registration

Every assessee, opting to maintain the electronic records having more than one factory or service tax registration, shall maintain separate electronic records for each factory or each service tax registration.

Submission of electronic records through e-mail or electronic storage device

Every assessee, shall on a request by the Central Excise Officer in a letter or email, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document.

Print out of electronic records to submitted during Audit, Investigation etc.

A Central Excise officer, during an enquiry, investigation or audit conducted in accordance with the provisions of Central Excise and Service Tax laws may request the assessee to furnish the duly signed print out of such records maintained in the electronic form.

Preservation of E-Records for the period of 5 years

Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

[Notification No. 18/2015-Central Excise (N.T) dated 06.07.2015]

Frequently Asked Question

Q We are owners of an air-conditioned restaurant. We are engaged in serving food and beverages in the said restaurant. Apart from such restaurant serving, we also sell food across the counter by way of parcels (i.e. take away sales). What will be the service tax implication on such activities carried out by us?

A Section 66E of the Finance Act, 1994 prescribes 'Declared Services' which shall be subject to service tax. Clause (i) of the said section prescribes "service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity" as a declared service.

Accordingly, it may be understood that the services provided by restaurants by way of serving of food and beverages in the restaurant shall be subject to service tax. However, exemption is granted by the mega exemption notification on services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year. Hence, the services provided by you in your air-conditioned restaurant by way of serving of food shall be subject to service tax.

On the contrary, over the counter sales made by you do not comprise of any service component which is taxable under the service tax net and hence, such take away sales of food made shall not be leviable to service tax but being sale of goods, are subject VAT as per respective State VAT laws.

Q What shall be service tax implications if we operate an air conditioned and another non-air conditioned restaurant separately but the food is sourced for both from a common kitchen? Also, will there be any change in service tax implication if the service is provided in other areas attached to the restaurant?

A The board vide Circular No.173/8/2013 – ST dated 07.10.2013, clarified that where in a complex, there are more than one restaurants, which are clearly demarcated and separately named but food is sourced from a common kitchen, only the service provided in the air-conditioned restaurant is liable to service tax and in a non air-conditioned or non centrally air-heated restaurant will not be liable to service tax. The circular further clarified that services provided by restaurant leviable to service tax in other areas of the hotel also are liable to service tax.

Accordingly, the services provided by you in non-air conditioned shall be exempt from service tax if the said restaurant is clearly demarcated and separately named. Further, services provided by you in other areas shall be leviable to service tax if such services are provided by the air-conditioned restaurant.

Q If service tax is applicable on restaurant services, what is the effective rate of tax payable on such services?

A Service tax on restaurant services shall be payable on the service portion only and this service portion is determinable as per the Service Tax (Determination of Value) Rules, 2006. Rule 2C of the said rules specify service portion in relation to serving of food or beverages as 40% of the total amount charged for such supply. Accordingly, service tax is payable on 40% of the bill value charged for supply (by way of serving) of food and beverages in the restaurant by you.

Tax being payable on 40% of the gross amount charged by the restaurants, effective service tax rate comes to 5.6% (40% of 14%) with effect from 01.06.2015. Prior to 01.06.2015, the effective service tax rate for restaurants was 4.944% (40% of 12.36%).

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 August 2015
Postal Registration No. KOL RMS/465/2015-17
Registration under RNI No. WBENG/2013/55099