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Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Happy Durga Puja and Vijay Dashmi to all our valued readers. Durga Puja is celebrated with great joy in West Bengal, Orissa, Assam and other North Eastern States. Hope, we all win over our internal as well as external evil on this festival.

September 30, 2015, last date for filling of Tax Audit/Income Tax return proved to be a big drama in the taxation history of our country. Starting with request sent to CBDT to extend this date, Circular issued by CBDT clarifying not to extend date, Writ filed in various High Court, Personal visit of ICAI President to the Finance Minister, Assurance given by FM to the President of ICAI, Circulation of falls circular/notification in all sort of media, Decision of Hon'ble High Courts, Extension granted to some of the states based on High Court Decisions, Discussion on applicability and SLP were going on till the editorial was written.

One thing we have learnt from this that we need to educate our client and ourselves to finish the work in time rather than hoping/praying for date extension. Moreover, penalty for late filing of Tax Audit/Income Tax return should be revised and it may be on per day basis as applicable in case of Service Tax. It can be suggested as part of pre-budget memorandum.

Service Tax officers again applied the power to arrest service tax evaders. As we all know, as per section 89(1)(d)(2) of the Finance Act 1994, whoever collects service tax in excess of Rs.50 lakhs but fails to credit the same to the government account within a period of 6 months from the day on which such payment becomes due is liable for imprisonment for a term which may be extended to 7 years. Power to arrest is vested with all the officers of service tax department. In case of such type of offence a person can be arrested without warrant.

One of the business man has been arrested by the Service Tax Kolkata for not depositing service tax of more than Rs. 50 lakh and also another arrest by DGCEI, Chennai Zonal Unit has been done in a similar case of service provider providing information technology software services and internet communication services.

So the assessee having a liability of more than Rs. 50 lakhs should be well aware that any day they can be in trouble if they are involved in such circumstances.

Works Contract service always created confusion in the mind of all person concern. Present issue of bulletin contains a detail FAQ on Works Contract on Page 2 and 3 and GST Update as our regular column is provided on page 4 of the issue.

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.

We are regularly receiving request for early issues of Tax Talk. Understanding the needs of our valued readers we have posted soft the copy of the newsletter at our website. You may refer all earlier issues of Tax Talk at www.gstpeople.com.

Editorial Board

DUE DATES		
PAYMENT	**FORM**	**DUE DATE**
Payment for Month/ Quarter ending September 2015 (all assessees)	E-payment	6th Oct, 2015
DECLARATION	**FORM**	**DUE DATE**
"Half Yearly Declaration (Exemption to exporters)"	"EXP-2 (Physical)"	15th Oct, 2015
* E-payment is mandatory for all assessees.		

DUE DATES		
RETURN	**FORM**	**DUE DATE**
Return for the half year April 2015 to September 2015 (All assessees)	ST-3	25th Oct, 2015
"Return for the quarter July 2015 to September 2015 (For a SEZ Unit or a Developer)"	A-3 (Physical)	30th Oct,2015

FAQ on Works Contract

Q.1 How tax on work contact is imposed?

Ans: Clause (h) of Section 66E (Declared List) of the Finance Act 1994 (here-in-after referred as `the Act') is as follows: "service portion in the execution of a works contract".

Q.2 What do you mean by works contract?

Ans: As per clause (54) of section 65B of the Act, "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.'

Q.3 What is the scope of this entry?

Ans: This entry of declared services provides that service portion in the execution of a works contract by one person for another for a consideration would be liable for service tax. Works contract for the purpose of this entry means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out:

(a) Construction,
(b) Erection, commissioning, installation,
(c) Completion, fitting out,
(d) Repair, maintenance, renovation, alteration of any movable or immovable property, or
(e) For carrying out any other similar activity or a part thereof in relation to such property i.e immovable or movable property.

Q.4 What is the difference between works contract and sale of goods?

Ans: The difference between works contract and sale of goods are as follow;

- In case of works contract primary function is to provide work or service and materials supplied are secondary, whereas in case of sale of goods primary function is supply of materials and providing work or service is incidental.
- In case of works contract articles produced becomes the property of buyer, property in goods passes by accession and accretion during the possession of work, where as in case of sale of goods "goods" are sold as "goods".
- Works contract is taxed as deemed sale, while sale of goods is taxed as actual sale.

Q.5 Whether contract for labour is works contract?

Ans: No. Contract for labour is different from works contract and labour contracts do not fall in the definition of works contract. In order to come within the ambit of works contract, it is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

Q.6 Would contracts for repair or maintenance of motor vehicles be treated as 'works contracts'? If so, how would the value be determined for ascertaining the value portion of service involved in execution of such a works contract?

Ans: Yes. Contracts for repair or maintenance of moveable properties are also works contracts if property in goods is transferred in the course of such a contract. Service Tax has to be paid in the service portion of such a contract.

Q.7 Would contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring be covered under works contract?

Ans: Yes, if such contracts involve provision of materials as well. Else it will be a construction contract only for service portion, liable for service tax in the head of construction service. Construction service are of two type Commercial Construction or Construction of Residential Complex.

Q.8 Is the definition of 'works contract' in line with the definition of 'works contract' in various State VAT laws?

Ans: The definition of 'works contract' in clause (54) of section 65B of the Act covers such contracts which involve transfer of property in goods and are for carrying out the activities specified in the said clause in respect of both moveable and immoveable properties. This is broadly in consonance with the definition of 'work contract' in most of the State VAT laws. However, each state has defined 'works contracts' differently while dealing with works contract as category of deemed sales. There could, therefore be variations from State to State.

Q.9 What is the way to segregate service portion in execution of a works contract from the total contract or what is the manner of determination of value of service portion involved in execution of a works contract?

Ans: As per rule 2A of the Service Tax (Determination of Value) Rules 2006 (here-in-after referred as `Valuation Rules'), two methods are available to compute value of services portion in execution of works contract. They are:

1. Value of Service Method
2. Composition Method

The provisions of said rule are as follows:

"Determination of value of service portion in the execution of a works contract.-Subject to the provisions of section 67, the value of service portion in the execution of a works contract, shall be determined in the following manner, namely:-

1. Value of Service Method

Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods involved in the execution of the said works contract.

For the purposes of this clause –

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) Value of works contract service shall include,-

i. Labour charges for execution of the works;
ii. Amount paid to a sub-contractor for labour and services;
iii. Charges for planning, designing, and architect's fees;
iv. Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
v. Cost of consumables such as water, electricity, fuel used in the execution of the works contract;
vi. Cost of establishment of the contractor relatable to supply

of labour and services

vii. Other similar expenses relatable to supply of labour and services; and

viii. Profit earned by the service provider relatable to supply of labour and services.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of the said works contract.

2. Composition Method

Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) In case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) In case of other works contracts, not covered under sub-clauses (A) and (B) , including maintenance , repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract."

However, w.e.f. 01.10.2014 above clauses (B) and (C) has been replaced by the following clause:

"In case of works contract, not covered under sub-clause (A), including works contract entered into for,-

(i) Maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) Maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

Service tax shall be payable on seventy per cent of the total amount charged for the works contract."

Q.10 What do you mean by the term "total amount" mentioned above?

Ans: The term "total amount" means the sum total of gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

i. The amount charged for such goods or services, if any; and

ii. The value added tax or sales tax, if any, levied thereon;

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Q.11 Whether composition method is optional?

Ans: Yes. As clause (ii) of rule 2A of Valuation Rules opens with the words "Where the value has not been determined under clause (i)…" The words used are "has not been". They are different from the words "cannot be". Thus, even if value can be determined under value of service method (clause (i) of rule 2A of the Valuation Rules) the person liable to pay service tax may choose to determine value under composition method (clause (ii) of rule2A of the Valuation Rules).

Q.12 Whether non–payment of VAT/Sales Tax by service provider would not amount to works contract services?

Ans: In order to classified under the Works Contract services, the property in goods transferred in execution of works contract must be leviable to VAT/Sales tax. As some of the State VAT laws provide exemption to small scale dealers and they are not required to pay VAT/Sales tax if their turnover does not exceed the prescribed limit. This does not mean that Sales tax/VAT is not leviable, it means that tax is levied but exempt from the payment. Thus, non-payment of sales tax or VAT by the service provider, owing to exemption or otherwise, cannot be the basis for concluding that the contract is not a works contract.

Q.13 Whether any exemption is available in relation to this entry?

Ans: Exemption under Serial Nos. 12,13 & 14 of Notification No.25/2012-ST, dated 20.06.2012 would be available. The lists of such exemption are given below:

- Construction service provided to Government, a local Authority, and Governmental Authority (Entry No.12 of Notification No.25/2012–ST, dated 20.06.2012)
- Exemption to various construction or related service (Entry No.13 of Notification No.25/2012–ST, dated 20.06.2012)
- Exemption to some of the infrastructure projects (Entry No. 14 of Notification No. 25/2012–ST, dated 20.06.2012)
- Works contract service provided by sub–contractor(Entry No.29(h) of Notification No. 25/2012–ST, dated 20.06.2012)

Q.14 Who will be liable to pay service tax for works contract services?

Ans: As per Notification No. 30/2012-ST dated 20.06.2012, in respect of services provided or agreed to be provided in service portion in execution of works contract, service provider and service receiver will be equally liable to pay service tax. The provisions shall apply only in following cases:

i. Service provider should be located on taxable territory.

ii. Service provider should be either of the following;

a) Individual

b) Hindu undivided family;

c) Association of person;

d) Partnership firm, whether registered or not

iii. Services should be provided to business entity registered as body corporate, located in taxable territory.

If all three condition satisfied service tax is payable in partial reverse charge or joint charge. And the service provider and service receiver both are liable to pay 50% of service tax separately.

GST Updates

Goods and Services Tax (GST) is one of the top priorities of the present government which requires both a constitutional amendment and extensive center state cooperation — means that it cannot put in place without the support of the opposition, most importantly the Congress leaders, who are adamant that they will continue to oppose the GST unless their demands are met, and the ground realities, as well as the number in upper house, give them a strong bargaining position.

In the Rajya Sabha, however, Modi faces an uphill challenge. The two thirds majority requirement means that even in the unlikely case that the entire membership of the upper house shows up for a vote it will take only 82 votes to stop the amendment. It will not be difficult for Congress to meet this bar.

If Modi manages to get the GST amendment through parliament, it will need to be ratified by 15 of India's 29 states. This likely will not be an issue: 16 states are already on board. Yet Modi's troubles will be far from over. Once the amendment is in place every one of India's states will need to pass the state level tax legislation that will create a GST in their state. This includes the ten states where Congress and its allies are in power.

In the mean time The Finance Ministry on Tuesday, 29th September, 2015 asked the industry to look at critical exemptions and Information Technology (IT) platform readiness rather than stressing too much on date of GST implementation.

Central Board of Excise and Customs (CBEC) Member V S Krishnan at a CII event on Tuesday stated that "The remarkable part of the GST journey is the impressive convergence between states on a host of issues. I would suggest industry to look at critical exemptions and IT platform readiness rather than stressing too much on date of GST implementation as this can hamper preparedness,"

Not just this, CII press release quoted him as saying "Goods and Service Tax (GST) once implemented will boost GDP growth by 1-2%. It will have a major impact on reducing logistics cost which is around 14-15% in India compared with the world average of 7%."

BOOK POST

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