# Penalties Under Service Tax Law

## Section 70 (1) late fee for delay in filing the return

If Half-yearly Service Tax Return (ST-3 / ST-3A) is filed after the due date of return filing then, the assessee is required to deposit late fees depending upon the period of delay. Such late fee can be a maximum of Rs. 20,000/- [ Please Refer: Section 70(1), Finance Act, 1994)

However, according to the provisions of Service Tax Rules, 1994 (Rule 7C) some allowance is available to the assessee for if the delay in filing of return is within specified period as shown under. [Please Refer: Rule 7C, Service Tax Rules, 1994]

| Delay in Filing of Return After the Due Date | Late Fees |
|---|---|
| First 15 days | Rs. 500/- |
| More than 15 days but not more than 30 days | Rs. 1000/- |
| More than 30 days | 1000 + 100 per day beyond 30 days |
| The Late Fee in any case Cannot Exceed Rs. 20,000/- | |

**Illustration:**

Due date is 25th April

What would be the late fees chargeable in case of filing of return of service tax under following situations.

April: 25, 26, May: 10, 11, 25, 26 28 June: 04, 05,

**Solution:**

| Actual Date of Filing | Particulars | Late Fees |
|---|---|---|
| April – 25 | On the due date | NIL |
| April – 26 | Within first 15 days (Even if just 1 day after the due date) | 500 |
| May – 10 | Within first 15 days (15th Day after the due date) | 500 |

| | | |
|---|---|---|
| May – 11 | After 15 days but not more than 30 days ( It is 16th Day) | 1000 |
| May – 25 | After 15 days but not more than 30 days ( It is 30th Day) | 1000 |
| May – 26 | Beyond 30 days (1000 + 100 X 1) as 1 day after 30 day limit | 1100 |
| May – 28 | Beyond 30 days (1000 + 100 X 3) as 3 days after 30 day limit | 1300 |
| June – 04 | Beyond 30 days (1000 + 100 X 10) as 10 days after 30 day limit | 2000 |
| June – 05 | Beyond 30 days (1000 + 100 X 11) as 11 days after 30 day limit | 2100 |
| For 220 Days | Beyond 30 days (1000 ) + (190 Days X 100) | 20000 |
| Beyond 220 Days | The Penalties shall not exceed Rs.20000 | 20000 |

# Penalties

Penalty is generally levied on the assessee for intentional violation of provision of the Act or Rules made there under. It is penal in nature and charged to the assessee in addition to the Interest and Service Tax.

If assessee proves there was a reasonable cause for failure in payment of service tax no penalty should be imposed on him [ Section 80, Finance Act 1994 ]

**Section 76: Penalty for Failure to Pay Service Tax:**

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax :

Provided that where service tax and interest is paid within a period of thirty days of —

i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;

ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may

## Section 77: Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —

(1) Any person, —

(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;]

(b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made there under, shall be liable to a penalty which may extend to [ten thousand rupees];

(c) who fails to —

(i) furnish information called by an officer in accordance with the provisions of this Chapter or rules made there under; or

(ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made there under; or

(iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to [ten thousand rupees] or two hundred rupees for everyday during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to [ten thousand rupees];

(e) who issues invoice in accordance with the provisions of the Act or rules made there under, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to [ten thousand rupees].

2. Any person who contravenes any of the provisions of this Chapter or any rules made there under for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

## Section 78: Penalty for failure to pay service tax by reason of fraud, etc.

When service tax has been not 'levied or paid' or has been 'short-levied or short-paid' or 'erroneously refunded', **by any of the below mentioned reason:**

(1) Fraud

(2) Collusion

(3) Wilful Mis-statement

(4) Suppression of facts

(5) Contravention of any of the provisions of this chapter or of the rules made there under with **intent to evade** payment of service tax,

The person, who has been served notice under sub section (1) of section 73 shall, in addition to service tax and interest specified in the notice , be liable to pay penalty which shall be equal to **hundred per cent** of such amount of service tax.

E.g. if the amount of service tax (short paid, not paid, short levied, not levied or erroneously refunded) was Rs. 1,00,000/- then penalty shall be Rs. 1,00,000 and total amount payable shall be Rs. 200000 plus interest.

Relaxation in Penalty Payment:-

Provided further that where service tax and interest is paid within a period of thirty days of —

i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined :

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period :

Example:-.

If notice has been served under section 73(1) CEO is of Rs. 100000 on 1.1.2015 and all the three i.e. service tax, interest and penalty has been paid within till 31.01.3015 then in this case penalty shall be 15% i.e. Rs. 15000.

If Service Tax determined u/s 73(2) by Central Excise Officer is Rs. 1,00,000/- on 01-01-2015 and all the three i.e. Service Tax, Interest and Penalty(**Reduced Amount**) is paid within 31.01.0215 then penalty would be Rs. 25,000/-

Penalty Increases/Reduces in further appeal:

Where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, the court, then, such reduced or increased service tax shall be taken into account.

Example: If Service Tax liability determined by Central Exercise Officer is Rs. 1,00,000/- then subsequently in appeal made the Service Tax determined by the Commissioner (Appeals) was Rs. 1,50,000/-, in further appeal Appellate Tribunal determined tax liability of Rs. 1,20,000/- then in such case if payment is made within 30 days then amount of penalty would be Rs. 30,000/- (25% of Rs. 1,20,000/- i.e. Service Tax Liability Determined by the Higher Authority in Appeal Hierarchy)

## 78A. Penalty for offences by director, etc., of company:

Where a company has committed any of the following contraventions, namely:—

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

## Section 73D: Publication of information in respect of persons:

If the Central Government is of the opinion that it is necessary in the public interest to publish the name of any person and any other particulars relating to any proceedings, it has power to publish such names and particulars in such manner as conferred by [Service Tax (Publication of Names) Rules,2008]

Publication under this section shall not be made in relation to any penalty until the time for presenting an appeal u/s 85 to the Commissioner (Appeals) or u/s 86 to the Appellate Tribunal, has expired without an appeal having been presented or If the appeal, is presented, has been disposed of by the competent authority.

**Whose name can be published?**

Persons who have been ADJUDGED under the provision of the Act to have contravened any of the provisions of the Act or rules made there under with the intent to evade payment of duty. Persons who have ADJUDGED to pay but has not paid any amount u/s 73 of the Act. Adjudged means a person against whom adjudication proceedings started by department have already been completed. [Please Refer: Service Tax (Publication of Names) Rules, 2008 ]

However, In the case of artificial entities like partnership firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, shall also be published if circumstances of the case justify such action in the opinion of the Central Government.

## Section 80: Penalty not to be imposed in certain cases:

If assessee can prove that there was a reasonable cause then penalty shall not be levied u/s 76, u/s 77 or u/s 78. No penalty shall be imposed if there was reasonable cause for the said failure. However, such relaxation is not available in the case of interest, interest is a mandatory provision and it is levied for any delay in payment made by the assessee.

**Section 83A: Power of Adjudication:**

When any person is liable to a penalty, such penalty may be adjudged by the appropriate Central Excise Officer conferred with necessary powers.

| Sr. No. | Central Excise Officer | Amount of Service Tax or CENVAT credit to be specified in the notice for the purpose of adjudication u/s 83A |
|---|---|---|
| 1 | Superintendent of Central Excise | Not exceeding Rs. 1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.) |
| 2 | Assistant Commissioner or Deputy Commissioner | Not exceeding Rs. 5 lakhs (except cases where Superintendents are empowered to adjudicate.) |
| 3 | Joint Commissioner | Above Rs. 5 lakhs but not exceeding Rs. 20 lakhs |
| 4 | Additional Commissioner | Above Rs. 20 lakhs but not exceeding Rs. 50 lakhs |
| 5 | Commissioner | Without limit. |

## Penal Provision: CENVAT Credit Rules 2004:

**Rule 14: Recovery of CENVAT credit wrongly taken or erroneously refunded.-**

1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply *mutatis mutandis* for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

(2) For the purposes of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: -

(i) the opening balance of the month has been utilised first;

(ii) credit admissible in terms of these rules taken during the month has been utilised next;

(iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.]

**Rule 15: Penalty.-**

1) If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty [in term of clause (a) or clause (b) of sub-section (1) of section 11AC of the Excise Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be].

2) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act, or of the rules made there under with intent to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of [clause (c), clause (d) or clause (e) of sub-section (1) of section 11AC of the Excise Act.]

3) In a case, where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made there under with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay [penalty in terms of the provisions of sub-section (1) of section 78] of the Finance Act.

4) Any order under sub-rule (1), sub-rule (2) or sub-rule (3 shall be issued by the Central Excise Officer following the principles of natural justice.

**Rule 15A: General penalty.-**

For any contravention of these rules for which no penalty has been provided in the rules, a penalty can be levied which may extend to Rs. 5,000/-.

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