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Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Happy Diwali everyone!! We wish that the divine Light of Diwali spread into your life and bring Peace, Prosperity, Happiness and Good Health. Diwali is marked by the end of devils and evils in and around us, and keeping in line with the true spirit of this great celebration, we hope this Diwali burns all your bad times and opens up loads of happiness upon you all.

Apparently good news for all Service Tax and Central Excise assessees is that the monetary limits for launching prosecution and making arrest for specified offences has been increased to rupees one crore. Though this revision has brought in relaxation amongst the assessees, it must also be noted here that this increased monetary limit is only an internal guideline to the department by means of Board's circular but the prescribed limits as per the relevant Acts are not yet amended. Though such circulars are binding on the department, prosecution and arrest proceedings are a subject matter of relevant jurisdictional magistrates and courts and such circular shall not be prevalent over them. This increased limit is seen as good news by the mass but the underlying statistics are somewhere ignored. The circular hints about the fact that there are a plethora of cases involving huge amounts and the number seems to be so large that the limited resources of the Department aren't able to launch proper proceeding in each applicable case owning to the lower limits! Guidelines as per the circular are discussed at page 2.

An amendment has been made to the CENVAT Credit Rules, 2004 so as to enable service providers to utilize the credit of education cesses in certain specified circumstances availed post rate change (i.e. after 1st June, 2015) against liability of service tax. The fate of balance of such credit of cess availed before the rate change is still unknown. The amendment and its implication is discussed in detail at page 3.

Continuous efforts are being made by the board to bring in transparent and non-ambiguous legal taxation provisions and in this line, the board has recently clarified availability and applicability of abatement on services of goods transport agencies and its ancillary services. The circular is discussed at page 3.

Certain amendments are made in the exemptions available vide the mega exemption notification. Moreover, the board has accorded with trade practice of non levy of service tax on services for remittance of foreign currency from outside India to India, prevalent amongst Indian banks and had relaxed payment of such tax leviable in the negative list regime but only upto 13th October, 2015. The said changes are discussed at page 3.

The Joint Committee on Business Process for GST has issued a report in respect of 'GST Return' in this month and the same has been published for comment and suggestions of the stakeholder. The key highlights of the report are placed at our regular column 'GST Update' on page 4.

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 the soft copy of the newsletter at our website. You may refer all earlier issues of Tax Talk at www.gstpeople.com.

Editorial Board

DUE DATES

RETURN	FORM	DUE DATE
"Half Yearly Return for the period April 2015 - September 2015 (with a late fees of Rs.500/-)"	ST-3	9th Nov, 2015
"Half Yearly Return for the period April 2015 - September 2015 (with a late fees of Rs.1,000/-)"	ST-3	24th Nov, 2015

* For delay beyond 24th Nov, 2015 Rs.1,000/- + Rs.100/day (Maximum Rs.20,000/-)

DUE DATES

PAYMENT	FORM	DUE DATE
Payment for the Month ending October 2015 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-payment	6th Nov, 2015

* E-payment is mandatory for all assesses with effect from 1st Oct, 2014.

Revised Guidelines for Prosecution & Arrests

The CBEC has issued revised guidelines for launching prosecution under the Central Excise Act, 1944 and the Finance Act, 1994. The key highlights of the Board Circular are as follows:

Monetary limits

In order to optimally utilize limited resources of the Department, revised monetary limits have been prescribed in the circular for arrests and launching prosecution. Prosecution can now be launched where evasion of Service Tax or misuse of Cenvat Credit in relation to specified offences is Rupees One Crore or more. This limit was previously rupees fifty lakhs.

Habitual Evaders

The aforesaid monetary limits shall not apply in cases of habitual evaders. An assessee would be treated as habitually evading tax or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past five years from the date of the decision such that the total tax evaded or total credit misused is equal to or more than Rupees One Crores.

Authority to sanction prosecution

The criminal complaint for prosecuting a person should be filed only after obtaining the sanction of the Principal Chief/ Chief Commissioner of Central Excise or Service Tax as the case may be. However, in respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the criminal complaint for prosecuting a person should be filed only after obtaining the sanction of Principal Director General/ Director General, CEI. An order conveying sanction for prosecution shall be issued by the sanctioning authority and forwarded to the Commissionerate concerned for taking appropriate action for expeditious filing of the complaint.

Procedure for sanction of prosecution

Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens-rea (guilty mind) which would indicate his guilt. Prosecution should not be launched in cases of technical nature, or where the additional claim of duty/tax is based totally on a difference of opinion regarding interpretation of law.

In the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it.

One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the test of being beyond reasonable doubt for recommending prosecution. Prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.

Monitoring of Prosecution

The Principal Commissioner/Commissioner of Central Excise/ Service Tax/ (Additional/ Joint Director in cases of DGCEI) should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory.

Appeal against Court order:

Where it appears that the accused person have been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, appeal should be considered against the order. Sanction for appeal in such cases shall be accorded by Principal Chief/ Chief Commissioner or Principal Director General/ Director General of DGCEI.

Publication of names of persons convicted:

Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act, 1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. The Board directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.

Procedure for withdrawal of sanction-order of prosecution

In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidences have come to light necessitating review of the sanction for prosecution, the Commissionerate or the DGCEI unit concerned should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidences, the sanctioning authority namely Principal Chief/ Chief Commissioner or Principal Director General or Director General of DGCEI, if satisfied, may recommend to the Board that the sanction for prosecution be withdrawn. However, in cases where the complaint has already been filed, an application should be filed by the concerned Commissionerate through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law.

Transitional Provisions

All cases after the issue of this circular shall be dealt in accordance with the provisions of this circular irrespective of the date of the offence.

Inspection of prosecution work by the Directorate of Performance Management:

Director General, Directorate of Performance Management and Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instruction contained in this Circular are being followed scrupulously and to ensure that reasons for pendency and non-compliance of pending prosecution cases are looked into during field inspections apart from recording of statistical data.

[Circular No. 1009/16/2015-CX dated 23.10.2015]

Arrests

Consequent to the revision in monetary limits for launching prosecution as aforesaid, the CBEC has revised the limits for arrests in Central Excise and Service tax.

It has issued guidelines so as to prescribe that arrest of a person who:

- knowingly evades the payment of service tax, or
- avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, or
- maintains false books of account or fails to supply any information, or,
- collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due may be made in cases where the evasion of Service Tax or the misuse of Cenvat Credit is equal to or more than rupees one crore.

[Circular No. 1010/17/2015-CX dated 23.10.2015]

Changes in Mega Exemption

1. Services of business facilitator to banking or insurance company

'Services provided by business facilitator or a business correspondent to a banking company in a rural area' were exempted vide the Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012.

This exemption has been cut short with effect from 21.10.2015 and the exemption has been made limited to services provided by a business facilitator or a business correspondent to a banking company with respect to a Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojana in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate and Aadhar seeding.

The exemption though has been made limited to specified services, it has been extended to any person acting as an intermediary to a business facilitator or a business correspondent providing such exempted services.

The existing exemption to services provided by a Business facilitator or a business correspondent to an insurance company in a rural area has been kept intact.

2. Charitable Activity

The definition of charitable activity as per the mega exemption notification has been amended to include 'advancement of yoga' as a charitable activity. Accordingly the exemption available in respect of performing charitable activities is extended to 'Yoga' as well.

[Notification No. 20/2015 – ST dated 21.10.2015]

Ancillary Services provided by GTA

In an attempt to clear up the numerous conflicts and confusions, CBEC has issued certain clarifications regarding chargeability of service tax on ancillary services provided by GTAs in the course of transportation of goods by road.

The circular specifies that the services provided by a Good Transport Agency is generally a composite service which may include various ancillary services such as loading, unloading, packing, unpacking, transshipment, temporary storage etc. These ancillary services may be provided by GTA itself or may be sub-contracted by the GTA. In either case, where for the service provided, GTA issues a consignment note which includes the value of ancillary services so provided and these ancillary services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road.

In this respect, it is clarified that a single composite service need not be fragmented into separate components as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. Accordingly, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, such services would form part of GTA service and therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

It is also clarified that services of transportation of goods by road by a GTA, in cases where GTA undertakes to deliver the goods at destination within a stipulated time, should be eligible for abatement, so long as the entire transportation of goods is by road and the GTA issues a consignment note for the same.

[Circular no. 186/5/2015-ST dated 05.10.2015]

Services of Indian Banks to MTSO

There were ambiguities regarding leviability of service tax on the remittance of foreign currency in India from overseas and on the commission or conversion charges charged for such remittances.

The CBEC in this regards, clarified vide Circular No. 163/14/2012–ST dated 10.12.2012 that no service tax is leviable on the remittance since it is a transaction in money and does not constitute a service. It was also clarified that the charges for such remittance are also not liable to tax as the person sending money and the person conducting remittance are both located outside India. Further, even the Indian bank who charges the person conducting remittance is not liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e. outside India, in terms of the general rule of the Place of Provision of Services Rules, 2012.

Subsequently vide Circular No. 180/06/2014 – ST dated 14.10.2014, the CBEC explained that the foreign money transfer service operator (MTSO), conducting remittances to beneficiaries in India, have appointed Indian Banks/financial entities as their agents in India who provide agency/ representation service to such MTSO for furtherance of their service to a beneficiary in India and are paid a commission or fee for their services. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. Hence, the agent falls in the category of intermediary as defined in the Place of Provision of Service Rules, 2012 and owing to the specific rule for intermediary services; such services were taxable.

Due to such ambiguity until clarified by the board on 14.10.2014, despite being liable to pay, such entities did not pay the tax. The Central Government therefore, vide Notification No. 19/2015-ST dated 14.10.2015 now directed that an Indian Bank or other entity acting as an agent to the MTSO, are not required to pay the service tax payable on the fee or commission received by such agents for the period from 01.07.2012 to 13.10.2014.

Credit of E. Cess and SHE Cess

The Central Government has inserted three new provisos to Rule 3(7)(b) of the CENVAT Credit Rules, 2004 to allow utilisation of CENVAT Credit of:

- Education Cess and Secondary and Higher Education Cess paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015
- credit of balance fifty per cent. Education Cess and Secondary and Higher Education Cess paid on capital goods received in the premises of the provider of output service in the financial year 2014-15
- Education Cess and Secondary and Higher Education Cess paid on input service in respect of which the invoice, bill, challan or Service Tax Certificate for Transportation of Goods by Rail (referred to in rule 9), as the case may be, is received by the provider of output service on or after the 1st day of June, 2015

for payment of Service Tax on any output service.

[Notification No. 22/2015 – C.E. (NT) dated 29.10.2015]

GST Updates

The government, in line with its tremendous efforts to roll out GST in the next fiscal year, is all positive to get the much awaited Constitutional Amendment Bill passed in the upcoming winter session of the Parliament and simultaneously geared up and going ahead with the preparatory work necessary for smooth implementation of the GST. Even the World Bank has acclaimed that the proposed GST law is the most important reform towards creating a single market in India and if it is implemented by April 2016 then its impact will be visible by 2018.

In order to engage with the stakeholders and invite comments from the public at large, the Ministry of Finance has been publishing the draft Business Processes of GST for the comments/feedback on the same. In this process, a report of the Joint Committee on Business Process for GST in respect of 'GST Return' has been published for discussion and suggestions.

The said report has suggested filing of a common periodic e-return for Central GST, State GST, Integrated GST and Additional Tax. It also outlined the periodicity of return for different categories of taxpayers. Emphasis has been made on common periodicity of returns for a class of taxpayers and different frequency for filing of returns for different class of taxpayers. The report suggests filing of details of outward supplies (GSTR-1) and details of inward supplies (GSTR-2) in addition to monthly Return for each registration. In case of compounding taxpayers, quarterly periodicity of return called (GSTR-4) is suggested. Subsequently, an Annual return (GSTR-8) is suggested to be filed by all taxpayers. It shall be based on financial records. A separate reconciliation statement, duly certified by a Chartered Accountant, may have to be filed by those taxpayers who are required to get their accounts audited under section 44AB of Income Tax Act, 1961.

GST law may provide for provision of TDS (Tax Deducted at source) for certain supplies of goods and/or services made to specified categories of purchasers who will be obligated to deduct tax at a certain percentage from the payment due to the suppliers.

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