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Tax Talk

The Monthly Service Tax Bulletin

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Editorial

Winter has arrived and this marks getting all geared up to welcome the New Year. This chilly winter shall also witness the cold yet steaming challenges faced by the Government for introduction of the long awaited Goods and Services Tax (GST). After a virtual washout of the Monsoon Session of Parliament, this Winter Session seems to be promising as Prime Minister Mr. Narendra Modi reached out to the principal opposition party, the Congress, seeking support for passage of the GST Constitution Amendment Bill.

The Prime Minister, while speaking during a debate on the Constitution in the Lok Sabha, highlighted the need for a consensual approach saying the majority versus minority situation should be the last resort in the parliamentary system. With the Prime Minister taking initiative of this kind on one hand we are quite hopeful towards scheduled introduction and implementation of GST but on the other hand the hurdles seem to be growing day by day. The opposition is stiff on its demands and the Government also wants to stay up on its contentions. Moreover, with the Chairman of the Empowered Committee of State Finance Ministers, Shri K M Mani having resigned, the post lies vacant and this may again trigger procedural and political delays for the most awaited roll out. The recent updates on GST are compiled at our regular column at Page 4 of this issue.

Swachh Bharat Cess of 0.5% has been levied effectively from 15.11.2015. It is leviable on all taxable services. This new levy triggered tremendous confusions and ambiguities amongst the service providers at large and the CBEC came up with few clarifications and a list of FAQs to bring out a much clear picture about the same. The levy and its effects along with the common doubts in its respect are sought to be answered by us by compiling the FAQs on the same at Page 2 of this issue.

The revenue boards are on an 'Ease of Doing Business' drive. The CBEC issued a Circular for implementing mechanism on speedy disbursal of pending refund claims of exporters of services. This year being declared as the 'Year of Taxpayer Services', the Board accorded primacy to speedy sanction of refunds in case of export of services. Accordingly, it has drawn up a scheme for fast track sanction of refunds of accumulated CENVAT credit to exporters of services. This scheme is not a substitute for the various notifications but is meant to complement them and is aimed at enabling ease of doing business. The scheme highlights as per the circular are outlined at Page 3 of this issue.

The scope and ambit of exemptions and exclusions has been a topic of dispute and litigations throughout. The board has been making efforts to clarify the issues and recently clarified the scope of the negative list entry in respect of 'seed testing'. The crux of the circular can be squeezed out to mean that testing and ancillary activities to testing such as certification, technical inspection, technical testing, analysis, tagging etc. rendered during testing of seeds, are well covered within the ambit of the negative list. The circular is discussed in detail at Page 3 of this 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 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

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

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

Swachh Bharat Cess

Q.1 What is Swachh Bharat Cess (SBC)?

Ans: It is a Cess, which is levied and collected at the rate of 0.50% of the value of taxable services in accordance with the provisions of Chapter VI of the Finance Act, 2015.

Q.2 What is the date of implementation of SBC?

Ans. The Central Government has implemented levy of SBC with effect from 15.11.2015.

Q.3 Whether SBC is leviable on exempted services and services in the negative list?

Ans. SBC is a cess leviable on taxable service only. It is not leviable on exempted services or services in negative list.

Q.4 Why has SBC been imposed?

Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q. 5 Where will the money collected under SBC go?

Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilize such sums for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6 How will the SBC be calculated?

Ans. SBC would be calculated on the taxable value of services provided. It can be said for easy understanding that the value on which service tax is levied is also the value on which SBC is leviable.

Q.7 Whether SBC would be required to be mentioned separately in invoice?

Ans. SBC would be levied, charged, collected and paid to Government independent of service tax and will be charged separately on the invoice, accounted for separately in the books of account and paid separately under separate accounting code.

Q.8 What is the accounting code for deposit of SBC?

Ans. For payment of SBC, a separate accounting code has been notified as under:-

SBC	Interest on SBC	Penalties on SBC
00441493	00441494	00441496

Q.9 What is the effective rate of service tax and SBC post introduction of SBC?

Ans. Effective rate of service tax plus SBC, post introduction of SBC, would be [14% + 0.5%].

Q.10 Whether SBC is a 'Cess on tax' and need to calculate SBC @ 0.50% on the amount of service tax?

Ans. No, SBC is not a 'cess on tax', rather it is a cess on the taxable value itself. SBC shall be levied @ 0.50% on the value of taxable services.

Q.11 Whether SBC is levied on all or selected services?

Ans. Government has notified that SBC shall be applicable on all taxable services except services which are either fully exempt from service tax under any notification issued or are otherwise not leviable to service tax (i.e. covered by the negative list).

Q.12 Will SBC be leviable also for services under reverse charge mechanism?

Ans. Yes, the Government has issued Notification No. 24/2015–ST dated 12.11.2015 to provide that SBC shall also be leviable on services notified to be under reverse charge vide Notification No. 30/2012-ST dated 20.06.2012.

Q.13 How will SBC be calculated for services where abatement is allowed?

Ans. Taxable services, on which service tax is leviable on a certain percentage of value of taxable service, will attract SBC on the same percentage of value as on which service tax is levied, i.e. value net of abatement. For example, in case of GTA, where abatement of 70% is presently available, i.e. taxable value is 30% of the gross billed amount, effective tax and SBC would be (14% ST+0.5% SBC) X 30% = 4.35% (4.20%+0.15%).

Q.14 Whether Cenvat Credit of the SBC is available?

Ans. Credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.

Q.15 What would be the point of taxation for SBC?

Ans. Since this levy has come for the first time, Rule 5 of the Point of Taxation Rules, 2011 would be applicable. In cases where payment has been received and invoice has been raised prior to 15.11.2015 or within 14 days i.e. upto 29.11.2015, there is no liability of SBC. In all other cases, SBC would be leviable @ 0.50% of the value of taxable services.

Q.16 How would the tax be calculated on services covered under Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006?

Ans. Tax on services covered by Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006, i.e. 'Works Contract Service', 'Money Changing Services' or 'Restaurant & Outdoor Catering Services' would be computed by multiplying the value determined in accordance with these respective rules with [14% + 0.5%]. Therefore, effective rate of Service Tax plus SBC in case of original works and other than original works under the works contract service would be 5.8% [(14% + 0.5%) * 40%] and 10.15% [(14% + 0.5%) * 70%] respectively. Similar, would be the tax treatment for Money Changing, Restaurant and Outdoor Catering services.

Q.17 Whether SBC would be applicable on services covered by Rule 6 of Service Tax Rules?

Ans. Rule 6 of Service Tax Rules, 1994 prescribes composite rate of tax for services of Life Insurance Business, Money Changing & Distributor or Selling Agent of Lottery. A new Sub-rule (7D) to Rule 6 of Service Tax Rules, 1994 has been inserted vide Notification No. 25/2015–ST dated 12.11.2015 so as to provide that the person liable for paying the service tax under other sub-rules to Rule 6, shall have the option to pay SBC as determined as per the following formula:-

ST [calculated as per sub-rule (7), (7A), (7B) or (7C)] X 0.5 %/14 %

The option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

Q.18 How would liability be determined in case of reverse charge services where services have been received prior to 15.11.2015 but consideration paid after 15.11.2015?

Ans. In respect of reverse charge mechanism, SBC liability is determined in accordance with Rule 7 of Point of Taxation Rules, 2011 as per which, Point of Taxation is the date on which consideration is paid to the service provider. Thus, SBC liability in such case will be 0.5% X Value of taxable service.

Q.19 Does a person providing both exempted and taxable service and reversing credit need to reverse SBC also in accordance with Rule 6 of Cenvat Credit Rules, 2004?

Ans. No. Reversal under Rule 6 is a payment of CENVAT Credit attributable to such proportion of services as are used for provision of the exempted services and SBC is not integrated in the CENVAT Credit chain. Accordingly, reversal of SBC is not required under Rule 6 of Cenvat Credit Rules, 2004.

Testing & Certification

Recently, the CBEC has clarified by way of a circular, the enigma over the applicability of service tax on 'Testing Services'. The clarification circular outlines and addresses the following issues:

Prior to the Negative List regime, i.e. prior to 01.07.2012, the services of "technical testing and analysis and technical inspection and certification of seeds" rendered by notified Central/State Seed Testing Laboratories/Agencies were exempted from Service Tax by way of a notification.

However, with the introduction of Negative List Regime, the said services were included in the Negative List. The relevant entry in the Negative list as on 01.07.2012 read as under:-

"(d) ***services relating to agriculture*** or agricultural produce by way of—

(i) ***agricultural operations*** directly ***related to production*** of any agricultural produce including cultivation, harvesting, threshing, plant protection or ***seed testing***"

The term 'Agricultural operations' have not been defined in the Chapter V of the Finance Act, 1994 and an inclusive and indicative list of such operations has been given. Thus, it has been defined as agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing. The exemption is thus not limited to the specified operations.

The term 'agriculture' has been defined under section 65B(3) as under:-

"agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products

Further, the term 'agriculture produce' has been defined under section 65B(5) as under:-

"agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market"

However, the word 'seed' was subsequently omitted w.e.f. 10.05.2013 to allow the benefit of exemption to all other testing in relation to agriculture or agricultural produce. The relevant entry in the Negative list w.e.f. 10.05.2013 reads as under:-

"(d) ***services relating to agriculture*** or agricultural produce ***by way of-***

(i) ***agricultural operations directly related to production of any agricultural produce*** including cultivation, harvesting, threshing, plant protection or ***testing***"

The word 'seed' from testing in agricultural operations was deleted so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

Additionally, it should be noted that testing cannot be considered in segregation from the activity of certification and other ancillary activities. Testing will be irrelevant unless certificate is received or seeds are tagged. Therefore, all processes are a part of the composite process and cannot be separated from testing.

In view of the above, it is clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as mentioned in the Negative List entry under sub-clause (i) of clause (d) of section 66D of the Finance Act, 1994. Therefore, such services are not liable to Service Tax.

[Circular No.189/8/2015-ST dated 26.11.2015]

Fast Track Refund to Exporters

The board has drawn up a scheme to fast track sanction of refund of accumulated CENVAT Credit to exporters of services.

Applicability of the scheme

This scheme is applicable to all registered exporters of services (referred to as "claimants") who have filed their refund claims as per Rule 5 of the CENVAT Credit Rules, 2004, **on or before 31-03-2015**, and which have not been disposed of as on date of the issue of this circular i.e. **10-11-2015**. The phrase 'disposed of' in this context means sanction or denial of refund either in whole or in part, by way of an adjudication order.

Note: Refunds which had been finalized earlier by issuance of an adjudication order but have been remanded back to the original sanctioning authority will not be covered under this scheme.

Additional documents to be submitted

In addition to the documents required to be filed along with the claim, a claimant is required to submit the following documents for fast track sanction of refund:

- A certificate from the statutory auditor in the case of companies, and from a chartered accountant in the case of assessees who are not companies, in the prescribed format which enumerates that the refund claim is correct, complete in all aspects and in accordance with the applicable rules.
- An undertaking from the Claimant that difference, if any, between any provisional refund paid to it and the amount of refund actually admissible shall be payable by the claimant on intimation along with applicable interest thereon.

Operation of the scheme

On receipt of the additional documents as listed above, in respect of pending claims, the jurisdictional Deputy/Assistant Commissioner will give a dated acknowledgement to the claimant. He will then make a provisional payment of 80% (eighty per cent) of the amount claimed as refund, within five working days of the receipt of the documents.

The DC/AC shall thereafter intimate payment of the provisional amount to the claimant in the prescribed format.

Note: The payment of 80% of the refund amount shall be purely provisional, based on the additional documents referred above and without prejudice to the department's right to check the correctness of the claim in terms of the relevant notification and recover any amount which has been provisionally paid. The circular also clarifies that the decision to grant provisional payment is an administrative order and not a quasi-judicial order and shall not be subjected to review.

After making the provisional payment, the jurisdictional Deputy/Assistant Commissioner shall undertake checking the correctness of the refund claim in terms of the relevant notification.

If during the course of verification, it appears that a part of the amount claimed as refund is inadmissible, the jurisdictional DC/AC shall issue a show cause notice (SCN) asking the claimant to show cause as to why the inadmissible amount should not be denied and wherever relevant, why any amount which has been provisionally paid should not be recovered. However, prior to the issuance of such a SCN, the claimant may be intimated about the inadmissible amount so that he has an opportunity to avail of the provisions of section 73(3) of the Finance Act, 1994, i.e. option to pay the inadmissible amount before issuance of the SCN itself. A speaking, appealable order will have to be passed with respect to the SCN. This order will be reviewed by the jurisdictional Commissioner.

[Circular No. 187/6/2015 – ST dated 10.11.2015]

GST Updates

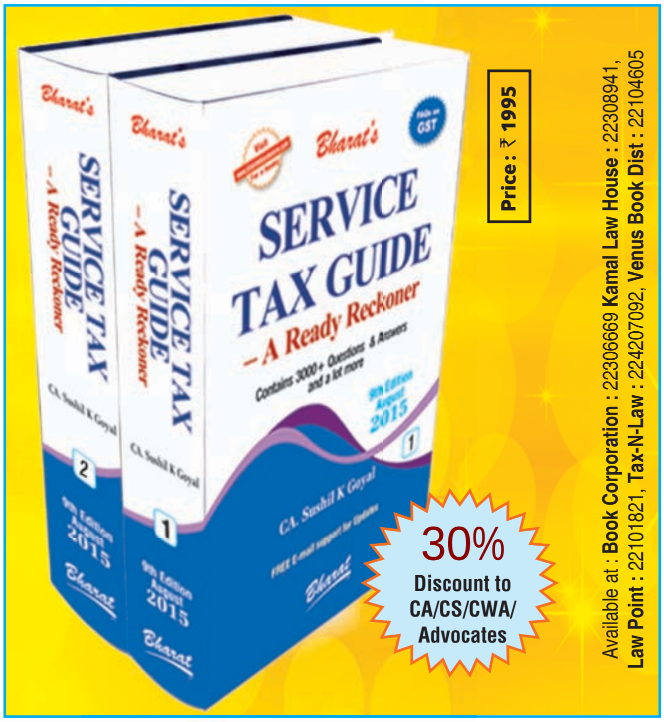
Continuous efforts of the Government to roll out GST in the next fiscal year are much talked about and can be seen widely in all its actions. Recently, our Prime Minister Shri Narendra Modi also reassured that GST will be rolled out as scheduled in the next year and in order to make way for a smooth sail of the hurdled Constitutional Amendment Bill, reached out to his predecessor; our former Prime Minister Dr. Manmohan Singh and the Congress Leader Smt. Sonia Gandhi to discuss the contentious issues in the GST bill.

Post meeting, the Finance Minister Shri Arun Jaitley, who was also present at the meeting along with Parliamentary Affairs Minister M Venkaiah Naidu, said that both sides have put forward their positions on GST and there is the possibility of more meetings in the future. Although after the said meeting with the most prominent opposition, the Central government is expecting that it will be able to pass the GST with consensus and not just a majority, the issue remains intact that the Congress demands for reforms in key areas of the GST have been stalling the process of passing the bill.

The opposition has been emphasizing the need of a constitutional cap of 18% on the GST rate and other concerns such as levy of 1% additional tax on inter-state supply, existence of an independent dispute redressal mechanism etc. and wants the Bill to be referred to a Select Committee for review. The Government now seems to be in a flow to address the key issues but it is not so convinced with the idea of capping the tax rate through the Constitution itself since any change thereafter shall require constitutional amendment all over again.

On the other hand, Shri K. M. Mani resigned from the post of Chairman of the Empowered Committee of State Finance Ministers in the wake of the Kerala high court's observation against him in a bribery case. The post lies vacant and new appointee shall also play a key role in bridging the gap between the States and the Centre so as to develop a bonded consensus between the two.

With the Government walking that much needed extra mile to acquire consensus on implementation of the GST, we keep our fingers crossed in all hope of its functionality by the proposed deadline of April, 2016.



BOOK POST

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