Rs. 5/-

Tax Talk

The Monthly Service Tax Bulletin

Editorial

February, the shortest month of the year with only 28 days in common years and 29 days in leap years. Despite this, bears all the capabilities to affect the love life and financial condition of the country. Like Mark Twain said *"It's not the size of the dog in the fight; it's the size of the fight in the dog."* With expectations like never before, all eyes will be on Budget 2016 to be laid down by the end of the month for which the pre-budget meetings are already underway.

Gossip is going on in the financial world; the Finance Minister may increase the service tax exemption limit. If the exemption limit is increase, it will be almost after 8 years. The increase in the service tax exemption limit will not only benefit small scale businessmen, but also ensure that the compliance burden to monitor the indirect tax administration will be reduced, allowing it to focus on bigger taxpayers. This will also seen as a major step aimed at benefitting businessmen who are likely to come within the ambit of the proposed Goods and Services Tax (GST).

Recently, numbers of orders are being issued by the Service Tax Department, Kolkata to reduce the pendency of the cases. We like to remind that the period of delays that may be condoned by the Commissioner (Appeals) is only one month. The assessee should be careful with the number of delay days, since the department is vested with all the powers to reject the appeal file once the limit of one month is exceeded. The assessee then will be left with no other option but to pay the demanded amount.

The faith of GST will be decided in the Budget session of the Parliament as the Finance Minister is quite hopeful that the hindrance in the introduction of GST in our country will overcome during this session. Hence, GST seems to be implemented during the year. We are also hopeful that path will be set in budget session that GST will be light of the day.

Instruction has been issued to clarify the dilemma arising due to divergence of view between Para 6.2.1 of the Education Guide 2012 and the CBEC Circular No. 151/2/2012 – ST dated 10.2.2012 on how flats handed over to land owners are to be valued for the purpose of levy of service tax. The issue is discussed in detail at Page – 2 of this issue.

The CBEC has issued a circular prescribing procedure for e-payment of refund/rebate claim in order to speed up the transfer of the fund directly to the beneficiary's bank account after sanction of the refund/rebate claim and thereby promote ease of doing business in all field formations. These instructions will be effective from **10.02.2016.**

The Joint committee on Business processes for GST after having an elaborate discussion with the trade, industry and other stakeholders had come up with its report on GST return. The report has been 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.

CA Sushil Kr Goyal

DUE DATES

PAYMENT	FORM	DUE DATE
Payment for the Month ending January 2016 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-payment	6th February, 2016

February 2016

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Instruction regarding valuation of flats for levy of Service Tax

The Ministry of Finance has set up a High Level Committee (HLC) as announced by the Finance Minister in his Budget Speech 2014-15 to interact with trade and industry and ascertain areas where clarity on tax laws is required. It has been pointed out by the HLC that there is a divergence of view between Para 6.2.1 of the Education Guide 2012 and the CBEC Circular No. 151/2/2012-ST dated 10.2.2012 on how flats handed over to land owners by the developer/builder are to be valued for the purpose of levy of service tax.

The definition of "Construction Service" was expanded with effect from 01.07.2010 to impose tax on builders/developers where the consideration or part of a consideration for sale of building is received before the issuance of completion certificate by the competent authority. In case of tri-partite construction business model, there are 3 parties involved:

i. The land owner;

ii. The builder/developer; &

iii. The contractor (who undertakes the construction).

In such a model, the land owner enters into an agreement with the builder in which the land owner gives either land/development rights to the builder i.e. right to construct/develop a residential complex and sell flats/houses of such complex to buyers. The builder/developer, in turn, agrees to assign a portion of the constructed area, in the form of flats in favour of the land owner. The remaining flats are sold by the builder/developer to various buyers. The builder/developer receives consideration for the construction service provided by him, from two categories of service receivers:

i. from landowner, in the form of land /development rights; and

ii. from other buyers, normally in the form of money.

The issue arises how the flats handed over to landowners are to be valued for the purpose of levy of service tax. In this respect the CBEC had issued Circular No. 151/2/2012-ST dated 10.02.2012. As per the said circular, value in case of flat given to the land owner will be determined in terms of Section 67(1)(iii) read with Rule 3(a) of Service Tax (Determination of Value) Rules, 2006. Accordingly, value of these flats would be equal to the value of similar flats charged by the builder/developer from the other buyers. In case the prices of flats/houses undergo a change over the period of sale, the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax.

Service tax is liable to be paid by the builder/developer on the 'construction service' involved in the flats given to the land owner at the time when the possession or rights in the property of the said flats are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g allotment letter).

The same issue has been also dealt in CBEC Education Guide on Taxation of Services, 2012 wherein it had been mentioned that the value of construction service provided to such land owner will be the value of the land when the same is transferred and the point of taxation will also be determined accordingly.

In order to reconcile the two views, the issue has been examined HLC. The HLC has opined that the guidelines communicated by the said circular are more appropriate. Since, the circular is in accordance with the provision relating to valuation as laid down in the Finance Act, 1994 and the Service Tax (Determination of Value) Rules, 2006. With regards to the Education Guide, it has been clearly stated in the Education Guide, 2012 that it is merely an educational aid based on a broad understanding of a team of officers on the issues. It is neither a "Departmental Circular" nor a manual of instructions issued by the Central Board of Excise and Customs. To that extent it does not command the required legal backing to be binding on either side in any manner. The guide was released purely as a measure of facilitation so that all stakeholders could obtain some preliminary understanding of the new issues for smooth transition to the new regime. Hence, Circulars such as the present one would prevail over the Education Guide, 2012.

In view of the above, it is directed that in valuing the service of construction provided by a builder/developer to a landowner, who transfers his land/ development rights to builder, for getting, in return, constructed flats/ dwellings from builder/developer, the Service Tax assessing authorities should be guided by the said Board Circular dated 10.2.2012 and not the Education Guide.

E-Payment of Refund/ Rebate

In order to speed up the transfer of the fund directly to the beneficiary's bank account after sanction of the refund/rebate claim and thereby promote ease of doing business, CBEC has prescribed the following procedure for e-payment of refund/ rebate for implementation by all field formations:

I. E-PAYMENT THROUGH AUTHORIZED BANKS

a) The payment under the system of electronic payment of refund/ rebate amounts through RTGS/ NEFT facility shall be made by the field formations through authorized banks.

b) The Commissioner concerned, after obtaining concurrence from the authorized bank(s) within the jurisdiction to provide for payment of refund/ rebate to assesses through RTGS/ NEFT facility, shall authorize the refund sanctioning authorities within their jurisdiction to make e-payment of refund/ rebate through such authorized banks only.

c) The banks may charge the refund claimant fee for remitting refund amount through RTGS/ NEFT as per RBI guidelines and the claimant would get only the net amount.

II. PROCEDURE FOR E-PAYMENT

a) While filing refund/ rebate claim for the first time, the claimants opting for this facility shall provide one-time authorization in duplicate, duly certified by the beneficiary bank in a prescribed format.

b) The refund sanctioning authority shall ensure that at least one signed statement of sanctioned orders along with a cheque for the consolidated refund/rebate amount, in the prescribed format, is forwarded to the authorized bank in a given month.

c) Upon receipt of the statement signed by the refund sanctioning authority and the cheque for the consolidated refund amount, the bank would credit the refund amounts to the respective accounts of the claimants through NEFT/RTGS after deducting the applicable NEFT/ RTGS charges as per RBI guidelines.

These instructions shall be put in place by the field formations by 10.02.2016.

GST Updates

Report of the Joint Committee on filing of Return in GST Regime

A return is a statement of specified particulars relating to business activity undertaken by the taxable person during a prescribed period. A taxable person has a legal obligation to declare his tax liability for a given period in the return, furnish the details about the taxes paid in accordance with that return, and file correct and complete return within stipulated time frame. There will be a common e-return for CGST, SGST, IGST and additional tax.

Who needs to file return in GST Regime

- Every registered person is required to file a return for the prescribed tax period, even if there is no business activity (i.e. Nil Return) during the said tax period of return.
- UN agencies etc. will have unique GST ID and will file return only for the month during which they make purchases (and not regular return.) They will be required to submit their purchase statements (without purchase invoices) as per the periodicity prescribed for claim of refund. In other words, there is no need to file regular return.
- Government entities / PSUs , etc. not dealing in GST supplies or persons exclusively dealing in exempted / Nil rated / non –GST goods or services would neither be required to obtain registration nor required to file returns under the GST law.

Periodicity of Return Filing

Common periodicity of returns for a class of taxpayers would be enforced. There will be different frequency for filing of returns for different class of taxpayers. The periodicity of return for different categories of taxpayers is as follows:

S. No.	Return /Ledger	For	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10th of the next month
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and ISD)	15th of the next month
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD)	20th of the next month
4	GSTR 4	Quarterly return for compounding Taxpayer	18th of the month next to quarter
5	GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Within 7 days after the date of expiry of registration.
6	GSTR 6	Return for Input Service Distributor (ISD)	15th of the next month
7	GSTR 7	Return for Tax Deducted at Source	10th of the next month
8	GSTR 8	Annual Return	By 31st December of next FY
9	Input Tax Credit Ledger of taxpayer		Continuous
10	Cash Ledger of taxpayer		Continuous
11	Tax ledger of taxpayer		Continuous

Other important points relating to periodicity of return filing are as under:-

(i) Normal / Regular taxpayers with multiple registrations (for business verticals) within a State would have to file GSTR-1, GSTR-2 and GSTR-3 for each of the registrations separately.

(ii) Taxpayers otherwise eligible for the compounding scheme can opt against the compounding and file monthly returns and thereby make their supplies eligible for Input Tax Credit in hands of the purchasers.

(iii) The filing of return would be only through online mode although the facility of offline generation and preparation of returns would be provided. The returns prepared in offline mode would have to be uploaded.

Steps for Return Filing:

Step1: The taxpayer will upload the final GSTR-1 return form either directly through data entry at the GST Common Portal or by uploading the file containing the said GSTR-1 return form through Apps by 10thday of month succeeding the month during which supplies has been made. The increase / decrease (in supply invoices) would be allowed, only on the basis of the details uploaded by the counter-party purchaser in GSTR-2, upto 17th day of the month. (i.e. within a period of 7 days).

Step2: GST Common Portal (GSTN) will auto-draft the provisional GSTR-2 of taxpayer based on the supply invoice details reported by the counter-party taxpayer (supplier) on a near real-time basis.

Step3: Purchasing taxpayer will accept / reject/ modify such auto-drafted provisional GSTR-2.

Step4: Purchasing taxpayer will also be able to add additional purchase invoice details in his GSTR-2 which have not been uploaded by counter-party taxpayer (supplier) as described in Step 1 and 2 above, provided he is in possession of valid invoice issued by counter-party taxpayer and he has actually received such supplies.

Step5: Taxpayers will have the option to do reconciliation of inward supplies with counter-party taxpayers (suppliers) during the next 7 days by following up with their counter-party taxpayers for any missing supply invoices in the GSTR-1 of the counter-party taxpayers, and prompt them to accept the same as uploaded by the purchasing taxpayer. All the invoices would be auto-populated in the ITC ledger of taxpayer. The taxpayer would, however, indicate the eligibility / partial eligibility for ITC in those cases where either he is not entitled or he is entitled for partial ITC.

Step6: Taxpayers will finalize their GSTR-1and GSTR-2 by using online facility at Common Portal or using GSTN compliant off-line facility in their accounting applications, determine the liability on their supplies, determine the amount of eligible ITC on their purchases and then generate the net tax liability from the system for each type of tax. Cash details as per personal ledger/ carried forward from previous tax period, ITC carried forward from previous tax period, ITC reversal and associated

Interest/Penalty, taxes paid during the current tax period etc. would get auto-populated in the GSTR-3.

Step7: Taxpayers will pay the amount as shown in the draft GSTR-3 return generated automatically at the Portal post finalization of activities mentioned in Step 6 above.

Step8: Taxpayer will debit the Input Tax Credit ledger and cash ledger and mention the debit entry No. in the GSTR-3 return and would submit the same.

Acknowledgement:

After submission of return, an Acknowledgement Number will be generated. In case of submission of a return by using offline tools, acknowledgement of submission will generated after some time as GSTN System will need to first verify details.

FAQ

Q. We had availed works contract service for construction of building. Whether we can take credit of the tax paid on works contract service?

A. Rule 2(l) of CENVAT Credit Rules, 1994, provides that any service used by provider of output service for providing an output service will qualifies as input service and accordingly, credit will be available. However, there are certain exclusions from the definition of input service. One of which is, if the service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for construction or execution of works contract of a building or a civil structure or a part, or laying of foundation or making of structures for support of capital goods. In other words, the service provider cannot avail the credit of works contract service or construction service if used for the above mentioned purpose.

However, there is an exception to the above i.e if the said services are used for the provision of one or more specified services then credit will be available.

Q. What if the building constructed is used for providing "Renting of Immoveable Property Service"?

A. We are using works contract service for construction of a building which will be subsequently let out. Firstly, the credit of input service is allowed when the same is used for providing taxable output service. In the instant case, the works contract service had not been used for providing output service i.e Renting of Immovable Property Service though it is being used in construction of the building. Since the output service is provided after the building is constructed. Further, as discussed if the said service is being used for construction or execution of works contract of a building or a civil structure or a part or laying of foundation or making of structures for support of capital goods which in turn is not availed for the provision of specified services, credit will not be available. Hence, we will not be eligible for credit on said works contract service.

Q. What if the building constructed is used for "Construction Services"?

A. We are using works contract service for construction of a building which in turn will be used by the company for providing construction service. The said service is used for providing output service and is also being used for the provision of specified services. Therefore, credit will be available on the same.

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