Tax Talk

The Monthly Service Tax Bulletin - Also Covering GST Rs. 5/-

Editorial

50th Issue!!!

Great feeling of achievement and at the same time humble also. We simply want to say THANKS! THANKS!! THANKS!!!

Recently, CBEC has issued a circular to simplify procedure of dealing with audit objections raised in indirect taxes by the office of CAG. It specifies that where revenue does not agree with the objections, no demand notice would be issued. Thus, where it is not necessary, assessee would not be taken through the litigation cycle. This revised guideline has been issued in an effort to make the indirect tax administration assessee friendly by bringing the audit objections to closure in an expeditious and fairer manner.

After a long gap another arrest in service tax has been made by Mangalore Service Tax Commissionerate for default of Rs. 1.38 Crore of Service Tax. So, defaulters! Beware!

Recently, the threshold limit below which appeals are not to be filed by the department in CESTAT (Tribunal) and High Courts have been raised to Rs. 10 lakhs and Rs 15 lakhs respectively. It is also directed to withdraw all cases in High Court and CESTAT where there is a precedent Supreme Court decision and against which no review is contemplated by the department. A good move by Government!

DUE DATES		
PAYMENT	**FORM**	**DUE DATE**
Payment for the month of April, 2016 (assessees other than individuals, proprietorship, HUF, partnership firm, OPC and LLP)	E-Payment	6th May, 2016
RETURN	**FORM**	**DUE DATE**
Half Yearly Return for the period October, 2015- March, 2016 (with a late fees of Rs. 500/-)	ST-3	14th May 2016
Half Yearly Return for the period October, 2015 - March, 2016 (with a late fees of Rs.1,000/-)	ST-3	29th May 2016
Note: For delay beyond 29th May, 2016 Rs.1,000 + Rs.100/- per day (Maximum Rs.20,000/-)		

The due date of the filing of service tax returns was 25th April which is extended to 29th April. If you have not filled your return yet please do it quickly otherwise the late fee will start swelling up and ultimately reach to its maximum.

Apart from return, month of April was also a month to receive show cause notices. A small piece of advice to those, who have received the show cause notices, is to take your time to represent your case by way of reply to show cause, considering all possible grounds which may be taken in your case. Since the preparation at this stage will help you at appellate level also.

As any services provided by the Government or a local authority had become taxable w.e.f. 1st April 2016 under reverse charge mechanism. Considering/understanding the scope of any service CBEC issued a notification dated 13.04.2016 to grant exemption to number of services provided by Government or a local authority and at the same time also clarified these exemptions by a circular. Moreover, point of taxation and valuation rules also have been amended by separate notifications. The same are discussed in the page 2 and 3 of the issue.

Most awaited reform in indirect tax is not moving at the pace it was expected. In the present situation Government is also uncertain about the next proposed date for GST. We hope somehow they will able to manage with the April' 2017 date. The recent updates on GST are available in page 4 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.

CA Sushil Kr Goyal

Any services by Government or a Local Authority

Clause (a) of Section 66D of the Act is as follow:

(a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere-

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers; or

(iv) any services*, other than services covered under clauses (i) to (iii) above, provided to business entities;

*`Any service' substituted for `support service' by the Finance Act, 2015 w.e.f 1st April, 2016

Above amendment is considered as one of the crucial changes with the announcement of the Union Budget 2016-17, is in relation to applicability of Service Tax on the services provided by Government or a local authority to a business entity. The applicability of service tax on **any services** provided by Government which was earlier limited to **'support service'** and insertion of **'assignment by the Government of the right to use the radio frequency spectrum and subsequent transfer thereof',** within the list of declared services are the key amendments have been introduced vide Union Budget qua the services provided by Government or local authority.

These amendments have raised various concerns across the board. Recently, the Central Board of Excise and Custom has come up with various clarifications on several aspects to bring clarity on the aforesaid amendment. The CBEC has also exempted certain services provided by Government or local authority. The said clarification and exemption is discussed hereunder:

a) Mega Exemption

1) **Business Entity:** Services provided to business entity with a turnover up to rupees ten lakh in the preceding financial year is being exempted. *[Entry No. 48 of N. No. 25/2012-ST dated 20.06.2012]*

2) **Services provided to another Government or a local authority:** Services provided by Government or a local authority to another Government or local authority is being exempted except the services which are specifically in the negative list in sub clause (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. *[Entry No. 54 of N. No. 25/2012-ST dated 20.06.2012]*

3) **An individual:** Services provided by way of issuance of passport, visa, driving license, birth certificate or death certificate is being exempted from levy of service tax. *[Entry No. 55 of N. No. 25/2012-ST dated 20.06.2012]*

4) **Where the gross amount charged for services do not exceed Rs.5,000/:** Services provided by Government or a local authority where the gross amount charged for services do not exceed Rs. 5,000/ have been exempted except the services which are specifically in the negative list in sub clause (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous supply of services the exemption shall be applicable where the value of taxable services does not exceeds Rs.5,000 per year. *[Entry No. 56 of N. No. 25/2012-ST dated 20.06.2012]*

5) **Services by way of tolerating non-performance of a contract:** Fines and penalty chargeable by Government or a local authority imposed for violation of statute bye laws, rules or regulations are not leviable to service tax. Fines or liquidated damages payable to Government or a local authority on non performance contract entered with them is being exempted. *[Entry No. 57 of N. No. 25/2012-ST dated 20.06.2012]*

6) **Public Services:** Any activity undertaken by Government or local authority against a consideration constitutes a service and the amount charged for performing such activity is liable to service tax. It is immaterial whether such activity are undertaken as statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in the statute or not. As long as the payment is made for getting the service in return it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that service tax is

leviable on any payment in lieu of any permission or license granted by Government or a local authority.

However, services provided by way of registration, testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large under any law for time being force is exempted. *[Entry No. 58 of N. No. 25/2012-ST dated 20.06.2012]*

7) **Individual Farmer:** Services by way of assignment of right to use natural resources to an individual farmer for the purpose of agriculture is exempt. Such allocation/auction to categories of persons other than individual farmers would be leviable to service tax. *[Entry No. 59 of N. No. 25/2012-ST dated 20.06.2012]*

8) **Article 243G of the Constitution:** Services by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution is being exempted. *[Entry No. 60 of N. No. 25/2012-ST dated 20.06.2012]*

9) **Natural Resources:** Exemption has been provided to services provided by way of assignment of right to use any natural resources where such right to use was assigned before

01.04.2016. However exemption is restricted to one time charge, in full upfront or in instalments, for assignment of right to use such natural resources. Therefore, periodic payment required to be made by the assignee such as spectrum user charges, license fees in respect of spectrum or monthly payments with respect to the coal extracted from the coal mines or royalty payable on extracted coal which shall be taxable. *[Entry No. 61 of N. No. 25/2012-ST dated 20.06.2012]*

10) **Telecom Service Provider or Radiofrequency spectrum:** Services provided by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of license fee or spectrum user charges is being exempted. *[Entry No. 62 of N. No. 25/2012-ST dated 20.06.2012]*

11) **Merchant Overtime Charges (MOT):** Services provided by way of deputing after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of MOT is being exempted. *[Entry No. 63 of N. No. 25/2012-ST dated 20.06.2012]*

12) **Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority:** Regulation of land-use, construction of

buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 -ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempted from Service Tax vide Notification No. 25/2012 -ST dated 20.6.2012 as amended by Notification No. 22/2016 -ST dated 13.4.2016 *[Entry 39 of N. No. 25/2012-ST dated 20.06.2012].*

b) Valuation

In case of any service provided by Government or a local authority to business entity, interest chargeable on deferred payment shall be included in the value of taxable service, where payment for such service is allowed to be deferred on payment of interest or any other consideration.

[Notification No. 23/2016-ST dated 13.04.2016]

c) Point of Taxation

Service provided by Government or a local authority have been kept under reverse charge mechanism. Point of taxation shall be earlier of the following dates:

(i) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challans or any other document issued by Government or a local authority demanding such payment; or

(ii) such payment is made.

The date on which payment in respect of any service provided by Government or a local authority becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment. For instance, Notice Inviting Applications (NIA) dated January 9, 2015 issued vide File No. 1000/16/2014-W.F./Auction for auction of right to use spectrum and letter dated March 29, 2015 issued vide File No. 1000 /23 / 2014 -W.F. /Auction by Department of Telecommunications to successful bidders of spectrum indicate the dates on which the payments in respect thereof become due.

In case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier.

[Notification No. 24/2016-ST dated 13.04.2016]

d) CENVAT Credit

Credit of service tax paid in a financial year on the one time charges payable in full upfront or in instalments, for the service of assignment of right to use any natural resource by Government, local authority or any other person shall be allowed to be taken evenly over a period of 3 years. However, the Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year in which the same is paid. Likewise, Service Tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid.

In case of further assignment of such right, credit of balance credit as does not exceed the service tax payable on the consideration charged for further assignment shall be allowed in the same financial year.

Amendment has also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource.

[Notification No. 24/2016-CE (NT) dated 13.04.2016]

e) Other Clarification

Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.

GST Updates

After being constantly persuaded by the BJP led Government, the Congress party finally struck a positive note towards the passage of GST bill in the Rajya Sabha which is pending since May, 2015. The congress party categorically stated that its support to government in the passage of legislations would be issue based and on merits, notwithstanding BJP's open threats to topple party governments in the backdrop of Uttarakhand developments. The Congress party further reiterated its earlier stand on the National Goods and Service Tax (GST) bill that it is for the concept but the particulars would have to be on the lines it has demanded all this while, with no compromise on its side.

The three pre conditions for passage of the bill as laid down by the congress are the upper cap to the tax rate must be specified in the constitution at 18%, abolition of provision of levy additional 1% tax for inter-state movement of Goods and neutral dispute redressal authority. The Congress Communication head, Randeep Surjewala reportedly stated that they are ready to pass GST in the ongoing budget session provided their conditions are met and further added that honorable Finance Minister is falsely naming the Congress as opposing the GST. According to him, it is the RSS (the BJP's ideological mentor) which has red-flagged GST.

He revealed that the BJP led government is well short of the needed numbers in the Rajya Sabha for the passage of the bill and sarcastically added that the majority can be achieved only if Jaitleyji had some magical formula for manufacturing votes. He also rejected the government claims to had reached out to them on GST.

On the Contrary, party's senior spokesman Anand Sharma told reporters that there cannot be any cooperation possible with the government as it has continued unabated its "politics of confrontation" with the opposition. He further added that there is a world of difference between Prime Minister Narendra Modi's precept and practice. He talks of cooperative federalism, but does exactly the opposite. Ending on a positive note, he also remarked that the support will be issue based after considering the merit.

The statement by the senior spokesperson is of greater significance since it came up a day after our honorable Finance Minister, Sri Arun Jaitley expressed his agreement for reasonability of tax rate but mentioned his difficulties for prescribing the rate in the constitution. There seems to be a divergence of views within the Congress Party itself. Such divergence of views can only result in delay of passage of the bill. A hot verbal war is seemingly going on between the two major political parties of India regarding GST. With an expectation of early end to the war, we eagerly await the bill.

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