

Tax Talk

The Monthly Service Tax Bulletin - Also Covering GST

Rs. 5/-

Editorial



The Hon'ble President has given assent to the Finance Bill, 2016 on Saturday, 14th May, 2016. The Finance Bill, 2016 now becomes the Finance Act (No. 28) 2016. The changes to be effective from enactment of the Act are effective from the said

date. Further, the changes for which the effective date was to be notified, the Central Government has notified the same to be effective from 1st June, 2016. The changes applicable with effect from aforementioned dates are discussed at Page 2.

'Krishi Kalyan Cess' ("KKC") in addition to Swachh Bharat Cess' ("SBC") will be levied at 0.5% on the value of all taxable services from June 1, 2016. The people at large are quite confused about ascertaining their liability in this transition period. Rule 5 of Point of Taxation Rules, 2011 deals with this issue which states that where payment has been received and invoice has been raised prior to 01.06.2016 or within 14 days from the date of levy i.e. upto 15.06.2016, then no tax will be leviable. In all other cases, tax will be leviable. This will cause hardship on the person liable to pay tax since this cess would also be leviable on the dues outstanding as on 31.05.2016 irrespective of the time when the service has been provided or agreed to be provided. Hence, it needs clarification. The levy and its effect along with the common doubts in its respect are sought to be answered by compiling the FAQs on the same at Page 3 of the issue.

A doubt has been raised with respect to continuance of reverse charge mechanism for services provided by arbitral tribunal and

members of such tribunal, with the withdrawal of exemption of service provided by a person represented on an arbitral tribunal to an arbitral tribunal with effect from 01.04.2016. It has been clarified by the CBEC that service tax liability for services provided by an arbitral tribunal (including the individual arbitrators of the tribunal) shall be on the service recipient if it is a business entity located in the taxable territory with a turnover exceeding rupees ten lakh in the preceding financial year. Accordingly, there is no change in this provision with respect to reverse charge mechanism.

Any services provided by Government or a local authority to business entity with a turnover up to rupees ten lakh in the preceding financial year was exempted. This exemption has been amended to bring parity with other exemptions that the said exemption will not be available in case of services specified in sub – clause (i), (ii) (iii) of clause (a) of section 66D of the Finance Act, 1994 and renting of immovable property.

Ironically, the party who was the first to propose the GST in 2006 is subsequently now blocking its passage for the political reasons best known to them. However, the Hon'ble Finance Minister Arun Jaitley expressed confidence that the much delayed Goods and Services Tax (GST) Bill will be passed in the monsoon session, saying "almost every political party" is supporting it. Further, many political commentators are of the view that the retirement of the members of the Parliament might just change the position in favour of the ruling party. The detailed discussion regarding the passage of bill in monsoon session has been discussed in Page 4 of the issue.

We hope this news letter 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

DUE DATES

PAYMENT	FORM	DUE DATE
Payment for the month of May, 2016 (assesseees other than individuals, proprietorship, HUF, partnership firm, OPC and LLP)	E-Payment	6th June, 2016

Changes effective from 14.05.2016

1) Time Limit for issuance of show cause notice

The limitation period for recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is enhanced by a period of one year. It has been made thirty months instead of eighteen months.

2) Interest Rate

Interest rate on delayed payment of tax is prescribed at 15%. However, in cases where Service Tax is collected but not deposited with the Central Government, higher rate of interest has been prescribed i.e. 24%.

For tax payers having turnover of Rs.60 Lacs or less in the preceding year, the reduction of 3% on applicable interest rate shall continue.

3) Penalty for offences by director etc., of company

Penalty proceedings shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under Section 76 or Section 78.

4) Point of Taxation

The specific rule making powers in respect of Point of Taxation Rules, 2011 shall be provided. Point of Taxation Rules, 2011 shall be amended accordingly.

5) Monetary limit for punishable offences

The monetary limit for filing complaints for punishable offences is enhanced to Rs. 2 crore.

6) Power to arrest

The power to arrest in service tax law has been restricted only to situations where the tax payer has collected the tax above Rs. 2 Crore but not deposited it with the exchequer.

7) Rebate to exporters

The rebate of Service Tax on taxable services which are used as input services shall be allowed where any goods and services are exported, by way of notification as well as rules.

8) Declared Service

Assignment by the government of the right to use the radio-frequency spectrum and subsequent transfers is stated as service under Section 66E of the Finance Act, 1994. It is being done for making apparent that it is a service subject to service tax and not sale of intangible goods.

9) Negative List

The specified educational services were covered under the Negative list. These services shall be omitted from the Negative List but the service tax exemption on them shall be continued by incorporating them in the mega exemption notification.

10) Retrospective effect to notification No. 01/2016- ST – Claim of Refund by the exporter

Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide Notification No. 1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment is being given

retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012.

One month period has been allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide notification.

11) Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption shall be extended to the said services provided during the period from the 01.07.2012 to 29.01.2014. Refund of Service Tax paid on the said services during the period from the 01.07.2012 to 29.01.2014 shall also be allowed in accordance with the provisions of law.

12) Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption.

a) Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –

(i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

was withdrawn with effect from 01.04.2015. The same is being restored till 31.03.2020 and on which appropriate stamp duty, where applicable had been paid prior to that date.

b) Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 1.4.2015. The same is being restored till 31.03.2020 for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015.

13) Indirect Tax Dispute Resolution Scheme, 2016

Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before the Commissioner (Appeals), the assessee, after paying the duty, interest and penalty equivalent to 25% of duty, can file a declaration, is being introduced. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution. However, this scheme will not apply in certain cases.

Changes effective from 01.06.2016

1) Service of transportation of passengers, with or without accompanied belongings, by a stage carriage:

This service has been omitted from Negative List. However, such services by a non-air-conditioned stage carriage shall continue to be exempted by way of exemption notification. The service of transportation of passengers by air-conditioned stage carriage will be taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with the same conditions.

2) Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance:

This service has also been omitted from the Negative List. However such services by an aircraft will continue to be exempted by way of exemption notification. The domestic shipping lines registered in India will be liable to pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge mechanism.

Krishi Kalyan Cess (KKC)

Q.1 What is KKC?

Ans. It is a Cess, which is levied and collected at the rate of 0.5% of the value of taxable services in accordance with the provisions of Chapter VI of the Finance Act, 2016.

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

Ans. The Central Government has implemented levy of KKC with effect from 01.06.2016.

Q.3 Whether KKC is levied on all or selected services?

Ans. Government has notified that KKC shall be applicable on all taxable services except services which are either fully exempt from service tax by a notification or special order issued under sub-section (1) or as the case may be under sub-section (2) of section 93 of The Finance Act, 1994 or are otherwise not leviable to service tax under section 66B of The Finance Act, 1994.

Q.4 Why KKC has been imposed?

Ans. KKC has been imposed in order to finance and promote the welfare of farmers and development of agriculture.

Q.5 How will the KKC be calculated?

Ans. KKC would be calculated on the taxable value of services provided. It can be said for easy understanding that the value on which Service Tax and Swachh Bharat Cess is levied, is the value on which KKC is leviable.

Q.6 Whether KKC would be required to be mentioned separately in invoice?

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

Q.7 What is the accounting code for deposit of KKC?

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

KKC	Interest on KKC	Penalties on KKC
00441509	00441510	00441512

Q.8 What is the effective rate of service tax, post introduction of KKC?

Ans. Effective rate of service would be 15% post introduction of KKC [14% Service Tax + 0.5% SBC + 0.5% KKC]

Q.9 Whether KKC is a 'Cess on tax' and need to calculate KKC @ 0.5% on the amount of service tax?

Ans. No, KKC is not a 'cess on tax', rather it is a cess on the taxable value itself. KKC shall be levied @ 0.5% on the value of taxable services.

Q.10 Will KKC be leviable on services covered under reverse charge mechanism?

Ans. Yes, the Government has issued Notification No. 27/2016-ST dated 26.05.2016 to provide that all the provisions for service tax under Notification No. 30/2012-ST dated 20.06.2012 shall be applicable mutatis mutandis for the purpose of KKC.

Q.11 How will KKC be calculated for services where abatement is allowed?

Ans. Notification no. 28/2016-ST dated 26.05.2016 provides that KKC shall be leviable only on that percentage of taxable value which is specified in Notification no. 26/2012-ST dated 20.06.2012 i.e. KKC will be charged 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 KKC would be $(14\% \text{ ST} + 0.5\% \text{ SBC} + 0.5\% \text{ KKC}) \times 30\% = 4.5\% (4.20\% + 0.15\% + 0.15\%)$.

Q.12 Whether Cenvat Credit of the KKC is available?

Ans. Notification No. 28/2016-CE(NT) dated 26.05.2016 has been brought out by the Central Government to clarify the position of Cenvat Credit in case of KKC which is as follows:

- An output service provider is entitled to take Cenvat Credit on input services in respect of KKC.
- Cenvat credit of any other duty, tax or cess will not be utilized for payment of output of KKC.

- Cenvat credit in respect of KKC on input services will be utilized only towards payment of KKC on output services.

Q.13 What would be the point of taxation for KKC?

Ans. Rule 5 of the Point of Taxation Rules, 2011 would be applicable which states that where payment has been received and invoice has been raised prior to 01.06.2016 or within 14 days i.e. upto 15.06.2016, there would be no liability of KKC. In all other cases, KKC would be leviable @ 0.5% of the value of taxable services.

Q.14 How would the tax be calculated on services covered under Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006?

Ans. As per Notification No. 28/2016-ST dated 26.05.2016, the value of taxable services for the purpose of the KKC shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006. Therefore, 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 $[14\% + 0.5\% + 0.5\%]$.

Therefore, effective rate of Service Tax plus SBC plus KKC in case of original works and other than original works under the works contract service would be $6\% [(14\% + 0.5\% + 0.5\%) \times 40\%]$ and $10.5\% [(14\% + 0.5\% + 0.5\%) \times 70\%]$ respectively. Similar, would be the tax treatment for Money Changing, Restaurant and Outdoor Catering services.

Q.15 Whether KKC 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 (7E) to Rule 6 of Service Tax Rules, 1994 has been inserted after Rule 6(7D) which was inserted for SBC, vide Notification No. 31/2016-ST dated 26.05.2016 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:-

$\text{ST} [\text{calculated as per sub-rule (7), (7A), (7B) or (7C)}] \times 0.5\% / 14\%$ 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.16 How liability would be determined in case of reverse charge mechanism where services have been received prior to 01.06.2016 but consideration paid after 01.06.2016?

Ans. In respect of reverse charge mechanism, KKC 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 subject to the condition that payment is made within 3 months. Otherwise the date immediately following the said period of 3 months.

However, a new proviso has been inserted. As per this proviso when there is change in the extent of liability, the point of taxation will be the date of invoice if service and invoice both has been provided before the date of such change.

Q.17 Will the rebate of KKC on input services be available when such services have been used for providing output services which have been exported under Rule 6A of the Service Tax Rules, 1994?

Ans. Yes, Rebate of KKC on input services is available. Notification No. 29/2016-ST dated 26.05.2016 has been brought out by the Government to insert KKC in the list of service tax and cess in the Notification No. 39/2012-ST dated 20.06.2012 that provides the conditions, limitations and procedure of rebate on inputs and input services where these are utilized towards output services which have been exported under Rule 6A of the Service Tax Rules, 1994.

Q.18 Will the refund of KKC be allowed for specified services received by units located in SEZ on which ab-initio exemption was available but not claimed?

Ans. Notification no. 30/2016-ST dated 26.05.2016 has been notified by the Central Government which allows the SEZ unit or Developer of SEZ to opt for refund of KKC paid on specified services on which ab-initio exemption was admissible but was not claimed.

GST Updates

The Party, who originally thought of GST, seemingly is the main blockage towards the passage of the bill. The Congress had first proposed the bill in the year 2006. In spite of being the major stakeholders for the generation of the most awaited tax reform in India, they are also the strong barrier for the BJP Government towards making the bill see the light of day. The present BJP government had originally planned to pass the GST Bill in Parliament in April, converting 29 states into a single market. But the deadline was missed as the bill remained stuck in the Rajya Sabha. The bill appears to be fated for further delay.

After completion of two years in office, a joyful BJP Government asserted that the Goods and Service Tax (GST) bill will be taken up in the monsoon session of the Parliament, which begins with July and ends with September like every year and assured for its passage even without the Congress backing. Both the Prime Minister and the Finance Minister have expressed strong hopes for passage of the bill. While the Prime Minister was optimistic about the passage of bill this year, the Finance Minister in addition articulated for passage of the bill this monsoon session of the Parliament.

There was a sense of similarity between the arguments presented by both the ministers where they revealed that the formidable numbers of parties in the parliament are in the favour of the bill. The BJP led Government further hints banking on the retirement of noticeable number of members of Rajya Sabha which is destined to happen sooner rather than later. They hope for the numbers to go in their

favour after occupancy of seats by the new members. The hope of the Government was further bolstered with the support announced by the Trinamool Congress for the GST Bill, soon after its victory in the Assembly polls. The hopes of the Government appear to be more than just flickering, since the numbers are in the favour. Barring the Congress, most other political parties of the opposition side also have shown emphatic support to the landmark constitutional amendment for GST. Such support is yet another ray of hope for change in the fate of the bill and thus, its passage. Basing opinion on such number game and support, the BJP led Government is of the opinion that the GST bill will soon be passed.

On the other hand, the former Finance Minister, P. Chidambaram lately accused the government for not being able to persuade them over the three principal objections raised by them. Clearing the air, he further remarked that to the best of his knowledge, there has been no engagement between the two parties across the table. Consequently, he advised the Government to reach out to them and consider their suggestions.

Despite the numbers being favourable, the government will have to ensure that the Congress does not disturb proceedings in Parliament, as it is an essential requirement for the passage of constitutional amendment legislation. Once the GST, touted as the biggest reform of the indirect taxation since Independence, is passed, India will become one single market. We sincerely hope to see India become a single market down the line.

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