Tax Talk

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

Editorial

Happy Durga Puja and Diwali to all our valued readers. We wish that all prayers be answered this Puja and Maa showers divine blessings on everyone. As we all know that Durga Puja is celebrated with great delight in West Bengal, Orissa, Assam and other North Eastern States. Apart from being the month full of festivals and occasions, it shall also bring with it the tedious task of statutory compliance under various taxation laws. The due date, for filing of Tax Audit report and Income Tax Return has been extended to 17^{th} October, 2016 and Service Tax Return within 25^{th} of this month.

A key milestone in the roll-out of the Goods and Services Tax (GST) was achieved after the Hon'ble President, Shri Pranab Mukherjee gave his assent on 8^{th} September, 2016, to the Constitution Amendment Bill that enables the implementation of this indirect tax reform. The enactment of the bill has set the stage for setting up of the all-powerful GST Council—a representative body comprising State Finance Ministers and the Union Finance Minister, which will finalize the design of GST. Following presidential assent last week to the GST Bill, the Union Finance Ministry on 12^{th} September, 2016 notified the provisions of the Constitution Amendment Act that allows for setting up the Goods and Services Tax (GST) Council. The Council is already underway for settling down all the perquisites for rolling out of GST.

Government is keen on introducing GST with effect from 1^{st} April, 2017. One of the biggest problem for the department officials and the assesses is to get acquainted with the new provisions. CBEC as a part of capacity building exercise has prepared a compilation of FAQ on GST. The FAQ compilation consists of 268 Pages, answered over 500 Questions covering 24 topics. CBEC also issued draft rules and formats relating to payments, invoices, returns, registration and refund. All the recent development in relation to the GST has been dealt in details in page 2 of the issue.

Various notifications have been issued with respect to the some of the exemptions provided by Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 to bring about the minor amendment which ultimately clarifies the scope of the exemptions so provided. Service Tax Return also has been amended to the extent to majorly incorporate the changes brought out by the Finance Act, 2016. Further, CBEC has also issued a Circular for prescribing revised monetary limits for the purpose of Issuance and Adjudication of show cause notices. These notifications and Circulars have been summarised in page 3 & 4 of the issue.

CBEC had also given guidelines for arrest in relation to punishable offences. The board had clarified that since arrest impinges on the personal liberty of any individual, thereby this power should be exercised with great responsibility and caution and only after a careful examination of the legal and factual aspect.

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. 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 Month/ Quarter ending September 2016 (all assessees)	E-Payment	6th October, 2016
DECLARATION	**FORM**	**DUE DATE**
Half Yearly Declaration (Exemption to exporters)	EXP-2 (Physical)	15th October 2016

DUE DATES

RETURN	FORM	DUE DATE
Return for the half year April 2016 to September 2016 (All assessees)	ST-3	25th October, 2016
"Return for the quarter July 2016 to September 2016 (For a SEZ Unit or a Developer)"	"A-3 (Physical)"	30th October, 2016

After the ratification of Goods and Services Tax Amendment bill by not less than 50% of the States, the landmark Constitution Amendment Bill was sent to the President of India for his assent. Hon'ble President Shri Pranab Mukherjee provided his assent to the bill and flagged the Goods and Services Tax Bill on 8th September, 2016, which would do away with Central and State taxes and usher into one tax regime for the entire country.

The government keen on getting the GST rolled out from 1st April, 2017 notified that the provisions of Section 12 of the of 101st Constitutional Amendment Act shall come into force from 12th September, 2016. It only meant that the GST Council should be setup within 60 days from 12th September, 2016. The GST Council, led by the Union Finance Minister and with representatives from all States, had its first two day meeting on 22nd and 23rd September, 2016 for flagging off the process of determining the nitty-gritty of the new indirect tax system and resolving differences on crucial principle issues.

In its first set of decisions, the Goods and Services Tax (GST) Council fixed the turnover-based exemption limit from such levies at Rs. 20 lakhs and Rs. 10 lakhs for North – Eastern and small states. The decisions of the Council ensured that the new tax will not be a compliance burden for small retailers and traders. It had also agreed on the draft compensation formula for States' revenue losses and accepted industry's rationale to subsume myriad cess levies in the GST. The GST Council further had the mandate to look into issues of dual control with the States demanding that they should be given the legal and administrative powers for imposing tax on entities with turnover of up to Rs. 1.5 crore. It has also been decided that the power for assessment of 1.1 million service tax assesses who are currently assessed by Centre, would remain with it. New assessees would be shared with State authorities after due training and capacity building. The conclusion of the first meeting of the GST Council marked consensus on three important issues of exemption limit, dual control and base year for compensation to States. The two-day meet of the GST Council mainly aimed at ironing out the issues between the Centre and States for rolling out the new indirect tax regime from the deadline. However the Council left the decision on fixing the actual tax rates and the finalisation of draft rules for later.

Addressing the media, after the maiden meeting of the Council, the Hon'ble Finance Minister claimed that Union and State officials have resolved key issues on enforcing a planned sales tax in India, and will meet next month to decide the main tax rate and those for different sectors. He further informed that the issue relating to the dual control was also taken up in the first meeting. He expressed that the Council had made headway on the contentious issue of dual control between States and Centre by allowing States to have administrative control over assessees with annual turnover of less than Rs 1.5 crore. For turnover of over Rs 1.5 crore, there will be jurisdictional assessment by either States or Centre but no dual control. He further said that on compensating States for any potential revenue loss, the GST Council was of the view that the compensation should be paid at regular intervals, either quarterly or bi-monthly. He concluded by saying that they have taken 3-4 suggestions that have come in, and officers meanwhile will discuss and decide in the future which of the various options is the best option.

With all the positivity coming out of the maiden meeting of the apex decision making body, the CBEC has also issued draft rules and formats regarding registration, payment, invoice, return and refund in public domain seeking suggestions and opinion. The rules and formats so published were to get the approval of the council in the next meeting.

The road which appeared smooth till then, hit a bump in the Second meeting of the council. The Second meeting of the GST council held on 30th September, 2016 agreed on five subordinate legislations dealing with issues of registration, payment, returns, refunds, invoicing under the GST regime but there were divisions over ratifying or approving the minutes of the first meeting of the council after at least two States disagreed with what was documented as decided on the Centre's assessing 1.1 million service taxpayers in the new dispensation. Further, non – ratification of even one – item on the minutes means that the whole minutes are not agreed.

The second meeting mainly targeted approving the draft rules and formats earlier released into public domain. The agenda of the second meeting was achieved to some extent with approval of the draft rules and formats. It is informed that the rules shall be notified once the act is passed. The rules approved will form part of the supporting legislations needed to rollout GST. The Council wants to be in the state of all readiness with all the subordinate legislations so that when the act is passed, they can notify these subordinate legislations for proper implementation. The other decision was with regard to the exemptions from various tax laws and taxes in place currently with which the Centre and States incentives a variety of industries to invest. Further, it was agreed that under the GST regime there would be levy of taxes on all exempted entities, and once the tax is levied, the Central government or State government, which gets that tax, would then reimburse from the budget, that quantum of tax back to exempted entity.

The government is aiming to implement GST from 1st April, 2017 but finalising these issues and the three draft GST legislation by mid-November will be crucial to adhere to this deadline. The GST Council's decisions are pivotal to the implementation of India's biggest ever tax reform. Among other things it will recommend the rate of GST, the main outstanding issue that political parties have failed to agree on even as they united to pass a constitutional amendment in the Parliament to give effect to the single tax. This meeting to decide the rates and slabs is slated to start from 18th of October, 2016. We are filled with all positive vibes and are hopeful that the government meets the self – established deadline of introducing GST.

Increased in Monetary Limit for Adjudication of Show Cause Notice

CBEC has revised the monetary limit for adjudication of show cause notice which is as follow:

Sl. No.	Central Excise Officer	Monetary Limits of tax/credit demand for Service Tax
1.	Superintendent	Not exceeding rupees 10 lakh
2.	Deputy / Assistant Commissioner	Above 10 lakh but not exceeding rupees 50 lakh
3.	Additional / Joint Commissioner	Above 50 lakh but not exceeding rupees 2 crore
4.	Commissioner	Without limit i.e. cases exceeding rupees 2 crores

However, the above monetary limit shall not be applicable in below mentioned cases:

(i) Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 lakh, shall also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding rupees 10 lakh but not exceeding rupees 50 lakh.

(ii) Cases of refund (including rebate), shall be adjudicated by the Deputy Commissioner / Assistant Commissioner without any monetary limit.

(iii) In cases of transit loss and Cenvat Credit, shall be adjudicated in the following manner:

Sl. No.	Central Excise Officer	Monetary Limits for Central Excise
1	Additional/ Joint Commissioner	Exceeding Rs.50 lakh
2.	Deputy/Assistant Commissioner	Above Rs.10 lakh but not exceeding Rs.50 lakh
3.	Superintendent	Not exceeding Rs.10 lakh

(iv) In case different Show Cause Notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

(v) In cases where the personal hearing has been completed.

(vi) Cases which have been remanded back for de novo adjudication shall be decided by the authority of the rank which passed the said remanded order.

[Notification No. 44/2016-ST dated 28.09.2016 & CBEC Circular No. 1049/37/2016-CX dated 29.09.2016]

Service Tax Return Amendments

The following amendments have been made in the returns:

i) ***Constitution of the assessee:*** One Person Company and Limited Liability Partnership has been included.

ii) ***Krishi Kalyan Cess (KKC):*** KKC is levied on any or all taxable services at the rate of 0.5% on the value of such taxable services w.e.f 01.06.2016. Also, as per Notification No. 28/2016-ST dated 18.05.2016, credit of KKC paid on input service shall be allowed and utilised only for the payment of such cess on the output services provided by the service provider. Accordingly, changes had been made in 'Tax Payable Sheet', 'Advance Payment Sheet', 'Paid Sheet', 'Challan Sheet', 'CENVAT Credit Sheet' and 'Distribution Sheet' of the Service Tax Return.

iii) ***Swachh Bharat Cess (SBC):*** Amendment had also been made to allow the adjustment of excess amount paid earlier as SBC in renting of immovable property on account of non availment of deduction of property tax paid and adjusted in this period under rule 6(4C) of the Service Tax Rules, 1994 which was earlier not considered in the Service Tax Return.

iv) ***CENVAT Credit:*** In addition to changes relating to KKC, the CENVAT sheet also incorporate the changes made by the Finance Act, 2016 with the respect to the Rule 6 of the CENVAT Credit Rules, 2004. This time in the return, rule 6 of the CENVAT Credit Rules, 2004 which deals with obligation of a manufacturer or producer of final products and a provider of output service in the case of exempted goods / services has been considered in details thereby trying to cover each and every aspect of the amendment brought in the said rules.

v) ***Input Service Distributor:*** Row relating to Rule 7(b) of the CENVAT Credit Rules, has been omitted which deals with credit not eligible for distribution.

[Notification No. 43/2016-ST dated 28.09.2016]

Renting of Precincts of a Religious Place

The exemption provided by way of renting of precincts of a religious place meant for general public had been restricted to the precincts which are owned or managed by the entity registered as a charitable or religious trust under section 12AA of the Income Tax Act, 1961, or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income Tax Act or a body or an authority covered under clause (23BBA) of section 10 of the Income Tax Act.

The term 'precincts' has also been defined to clarify the scope of the said exemption vide circular dated 06.09.2016. The term 'precincts' has been considered in wider sense to consider all the immovable property of the religious place located within the outer boundary walls of the complex (of building and facilities) in which the religious place is located, as being located in the precincts of the religious place. Further, the immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and benefit of the said exemption may also be extended to the same.

[Notification No. 40/2016-ST dated 06.09.2016 & CBEC Circular No. 200/10/2016-ST dated 06.09.2016]

Recent Updates

Service by Government or a Local Authority

Service provided by Government or a Local Authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the financial year 2015-16 on payment of license fee or spectrum user charges, as the case may be was exempted. The said exemption has been amended, to extend the said benefit, also to the service provided prior to 1st April, 2016.

[Notification No. 39/2016-ST dated 02.09.2016]

Service by State Government Industrial Development Corporations/ Undertakings

Exemption has been provided on one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable on long term (thirty years, or more) lease of industrial plots granted by the State Government Industrial Development Corporations/ Undertakings to industrial units with effect from 22.09.2016.

[Notification No. 41/2016-ST dated 22.09.2016]

Services by way of Advancement of Yoga

Retrospective exemption has been provided for the service rendered by way of advancement of yoga by an entity registered under section 12AA of the Income tax Act, 1961.

[Notification No. 42/2016-ST dated 26.09.2016]

Services by Educational Institution

Exemption has been provided for service of transportation, by educational institution to the students, faculty and staff for the period from 01.04.2013 to 10.07.2014.

[Notification No. 45/2016-ST dated 30.09.2016]

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