

Demand, Adjudication and Offences

Question 1

*Under what circumstances Central Excise Officer can make **best judgement assessment** under Service Tax Law?*

Answer

Best judgment assessment: According to provisions of Section 72 of Finance Act 1994 if any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70; OR
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Question 2

Raman Ltd. has been filing its service tax returns regularly. However, its jurisdictional commissioner has reasons to believe that Raman Ltd. has failed to declare the value of its taxable services correctly. Under these circumstances, what action can be taken by the jurisdictional Commissioner of Service Tax?

Answer

Sub-section (1) of Section 72A [which has been inserted by Finance Act, 2012 with effect from 28.05.2012] of Finance Act, 1994 provides, amongst other things, that if the Commissioner of Central Excise has reasons to believe that any person liable to pay service tax (herein referred to as “**such person**”) has failed to declare or determine the value of a taxable service correctly, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.

Therefore, in the present case, jurisdictional Commissioner of Central Excise can direct Raman Ltd. to get its accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by him.

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Question 3

Continuing with Question No. 2, whether Raman Ltd. can take a plea that its accounts for the relevant years have been audited under Income Tax Act, 1961?

Answer

According to provisions of Section 72A(3) of Finance Act, 1994, the provisions of sub-section (1) of section 72A shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force. Therefore, Raman Ltd. can't take a plea that its accounts for the relevant years have been audited under Income Tax Act, 1961. In other words, Raman Ltd. will have to comply with the order, if any, of jurisdictional Commissioner of Service Tax and get its accounts audited by the nominated Chartered Accountant/Cost Accountant to the extent and for the period specified in the relevant order.

Question 4

What is time limit for recovery of service tax under different circumstances? When a detailed show cause notice is not required to be issued ?

Answer

According to Section 73(1) of Finance Act, 1994 Central Excise Officer at any time **within 18 months from the relevant date** serve notice on the person chargeable with the service tax, requiring him to show cause why he should not pay the amount specified in the notice. However, the time limit of 18 months shall be substituted by 5 years in case where such short payment or non-payment of service tax or erroneous refund to the assessee is by reason of:-

- (a) fraud; or
- (b) collusion; or
- (c) willful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any provisions of the Chapter or the rules made thereunder with intent to evade payment of service tax

However, where the service of notice is stayed by an order of the Court, the period of such stay shall be excluded in computing the period of 5 years or 18 months , as the case may be.

Meaning of term 'Relevant Date'

Situation	Relevant Date
1. Where service tax has escaped assessment or has been under assessed or has not been paid or has been short paid:	

Situation	Relevant Date
(i) if the assessee is liable to file the return, and	
(a) return is filed	Date on which return is filed
(b) return is not filed	Last date on which the return is to be filed
(ii) in other cases	Date on which service tax is due to be paid
2. Where service tax is provisionally assessed	Date of adjustment of service tax after final assessment
3. Where any sum has been erroneously refunded	Date of refund

When a detailed show cause notice is not required to be issued

According to Section 73(1A) [inserted with effect from 28.05.2012], notwithstanding the provisions of Section 73(1), Central Excise Officer is not required to issue a detailed show cause notice if the following cumulative conditions are satisfied:

- A statement [containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period] is served on the same assessee on whom earlier notice(s) was/were served.
- Grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

If the above conditions are satisfied, then statement served would be deemed as service of notice on such person. This provision has been incorporated with a view to save the time of the Department [which gets unnecessarily wasted in retyping the same grounds again and again] as well as keeping in mind the larger objective of saving paper [which gets consumed during the course of retyping the same charges].

For Example: XYZ Ltd. working as a tour operator is served a (detailed) show cause notice for the period 2011-12 on the ground of failure to pay service tax in respect of outbound tours. Central Excise Officer intends to issue show cause notice for the period from 01-10-2012 to 31.03.2013 on the above ground only i.e. failure to pay service tax in respect of outbound tours. By Virtue of Section 73(1A), Central Excise need not serve a detailed show cause notice for the above-mentioned subsequent period i.e. 01-10-2012 to 31.03.2013. On the contrary, he has to just prepare a statement containing the details of service tax not paid and that statement shall be deemed to be show cause notice in view of section 73(1A).

Question 5

Briefly indicate the provisions under the Finance Act, 1994 relating to interest under section 75.

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Answer

Section 75 of the Finance Act, 1994 provides for interest on delayed payment of service tax. Failure to pay service tax, **including a part thereof**, in time attracts **simple interest** at a rate not below 10% per annum but not exceeding 36% per annum as may be notified by the Central Government. With effect from 01.04.2011 the rate of interest to be charged is as per following brief table:

Type of Assessee	Rate of Interest
For all assessees other than Small Scale Sector Assessee	18% p.a.
For Small Scale Sector Assessee[A service provider whose value of taxable services does not exceed ₹ 60 lakhs during any of the years covered by the notice or during the last financial year]	15% p.a.

Question 6

Rahul Khanna, a practicing Chartered Accountant was liable to pay service tax of ₹ 5,15,000 for the quarter ending 30.06.2012. He deposited aforementioned service tax only on 15.09.2012. Compute the amount of interest payable by CA. Rahul Khanna under section 75 on the assumption that value of taxable services provided by him during the last financial year was ₹ 55.40 lakhs. Also compute the amount of interest payable by CA. Rahul Khanna if the value of services provided by him during the last financial year was ₹ 80.90 lakhs.

Answer

W.E.F. 01.04.2011 the rate of interest to be levied under section 75 on the late payment of service tax depends upon the fact whether the concerned assessee is Small Scale Sector Assessee or not. A service provider whose value of taxable services **does not exceed ₹60 lakhs** during any of the years covered by the notice or during the last financial year is termed as Small Scale Sector Assessee. Accordingly interest to be paid by CA. Rahul Khanna **has been exhibited in the following succinct table:**

Value of services provided during the last financial year	Rate of interest to be applied	Amount of Service Tax deposited beyond the last date	Period for which interest to be levied	Amount of Interest to be deposited in accordance with Section 75
₹55.40 lac	15% p.a.	₹5,15,000	72 days[Gap between 15.09.2012 and 05.07.2012]	₹15,197[₹5,15,000 X 15% X 72/366]
₹80.90 lac	18% p.a.	₹5,15,000	72 days[15.09.2012 and 05.07.2012]	₹18,236[₹5,15,000 X 18% X 72/366]

Question 7

M, an assessee fails to pay service tax of ₹ 15 lakhs payable by 5th January, 2013. He pays the amount on 16th January, 2013. What is the penalty payable by M?

Answer

Before giving the answer to this practical problem, the provisions of section 76 are given below in tabular format for the purpose of quick recapitulation:

S.No.	Relevant Sub-Heading	Relevant Provisions of Section 76
1.	When Penalty u/s 76 is leviable	When any person liable to pay Service Tax either does not (i.e. of his own choice) or fails (due to some compelling reason) to pay service tax which does not fall within the purview of expression 'reasonable cause' as envisaged under section 80 by the stipulated time.
2.	Quantum of Penalty	(A) ₹ 100/- per day for every day during which such failure continues OR (B) at the rate of 1% per cent of such tax, per month, [i.e. 12% p.a.] whichever is higher . However, total amount of penalty payable under this section shall not exceed 50% of the service tax that the assessee has failed to pay.
3.	Period for which penalty is to be levied	Beginning with the first day after the due date and ending with the date of actual payment

In the light of above statutory provisions the penalty under section 76 has been calculated as under:

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to be deposited by M	₹15,00,000
2.	Due date of depositing Service Tax	05.01.2013
3.	Date on which Service Tax actually deposited	16.01.2013
4.	No. of days by which Service Tax was deposited late	11 days [16 th Jan. – 5 th Jan.]

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5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A) ₹100/- per day for 11 days = ₹1,100; OR (B) 1% of the amount of default for 11 days = ₹5,323 [₹15,00,000 X 1% X 11/31] IIND STEP: - Higher of the above two amounts is to be restricted to 50% of amount of service tax required to be paid i.e. ₹5,323/- is to be compared with ₹ 7,50,000/- [50% of ₹15,00,000/-]. Since the aforementioned amount of ₹ 5,323/- is within the ceiling of ₹7,50,000/- the amount of penalty finally works out to be ₹5,323/-
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Question 8

Kirti Ltd. was required to deposit Service Tax of ₹ 10,000/- by 5th May, 2011. It actually deposited the foregoing amount of Service Tax on 5th November, 2014. Compute the amount of penalty to be paid by Kirti Ltd. in terms of Section 76 of Finance Act, 1994.

Answer

Table exhibiting the computation of liability to be paid by Kirti Ltd in terms of Section 76 of Finance Act, 1994

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to deposit by Kirti Ltd.	₹10,000
2.	Due date of depositing Service Tax	05.05.2011
3.	Date on which Service Tax actually deposited	05.11.2014
4.	No. of days by which Service Tax was deposited late	1280 days [05.05.2011 – 05.11.2014] OR 3.5 years
5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A) ₹100/- per day for 1280 days = ₹1,28,000; OR (B) 1% of the amount of such tax per month (i.e. 12% p.a. for 3.5 years = ₹ 4,200 [10,000 X 12% X 3.5 years]) IIND STEP: - Higher of the above two amounts is to be restricted to amount of 50% of service tax

		required to be paid i.e. ₹1,28,000/- is to be compared with ₹5,000/-[50% X ₹10,000/-]. Since the aforementioned amount of ₹1,28,000/- exceeds the ceiling of ₹5,000/- the amount of penalty is be finally restricted ₹5,000/-
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Question 9

Harpreet Pvt. Ltd. was required to deposit Service Tax of ₹1,00,000/- by 05.05.2011. However, the said company actually deposited Service Tax on 03.11.2012. Compute the amount of penalty to be paid by Harpreet Pvt. Ltd. as per provisions of Section 76 of Finance Act, 1994.

Answer

Table showing the computation of penalty payable by Harpreet Pvt. Ltd. as per provisions of Section 76

S.No.	Nature of Transactions	Details
1.	Amount of Service Tax failed to be deposited by Harpreet Pvt. Ltd.	₹1,00,000
2.	Due date of depositing Service Tax	05.05.2011
3.	Date on which Service Tax actually deposited	03.11.2012
4.	No. of days by which Service Tax was deposited late	548 days [03.11.2012 – 05.05.2011] OR 1.5 years
5.	Computation of Quantum of Penalty	IST STEP:- Higher of the following two amounts (A) ₹100/- per day for 548 days = ₹54,800; OR (B) 1% of the amount of such tax per month (i.e. 12% p.a. for 1.5 years = ₹18,000 [1,00,000 X 12% X 1.5 years]) IIND STEP: - Higher of the above two amounts is to be restricted to 50% of amount of service tax required to be paid i.e. ₹54,800/- is to be compared with ₹50,000/-[50% of ₹1,00,000]. Since the aforementioned amount of ₹54,800/- exceeds the ceiling of ₹50,000/- the amount of penalty will be restricted to ₹50,000/-

Question 10

Briefly explain with a note the time period for filing a claim for **refund of service tax by an exporter of goods** and sanction of refund claim by the Department.

Answer

According to Notification No.41/2012-ST dated 29.06.2012 the time period for filing a refund claim is one year from the date of export of goods. The exporter is required to file a refund claim in prescribed form A-1 from the date of export of goods. Further, in the aforementioned Notification it has been provided that Sanction of refund claims shall be made by the Department officials i.e. AC/DC of Central Excise within one month from the receipt of the claim.

Question 11

Briefly explain the following with reference to the Service Tax Rules, 1994 and the Finance Act, 1994:-

- (i) Appeal to Commissioner of Central Excise[Appeals]
- (ii) Appeal to Appellate Tribunal

Answer

- (i) **Appeals to Commissioner of Central Excise (Appeals):** According to the provisions of section 85(1) of the Act any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Commissioner of Central Excise [hereinafter abbreviated as "CCE"] may file an appeal to the Commissioner of Central Excise (Appeals)[hereinafter referred as " CCE(Appeals)"]. The said appeal is popularly known as "First Appeal" .The other relevant provisions are given in the following table:

S. No.	Suitable Sub-Heading	Particulars/Details	Relevant Statutory Provisions, if any
1.	Prescribed Form for filing the first appeal	ST-4	Section 85(2) of the Act read with Rule 8(1) of STR, 1994
2.	How many copies of the appeal are to be filed	Two {It is advisable to prepare three copies of the appeal. One copy will be given back as an acknowledgment]	Rule 8(2) of STR, 1994
3.	Time Limit for filing the first appeal	Two months from the date of receipt of the decision or order of such adjudicating authority [relating to service tax, interest	Section 85(3A) of the Act

		or penalty] made on or after 28.05.2012 (the date on which Finance Bill, 2012 receives the assent of the President of India)	
4.	Extension of Time Limit for filing the first appeal	Above-mentioned period of two months may be extended by a period of one month. However, the extended time of one month is allowed only when CCE (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within earlier period of two months.	Proviso to Section 85(3A) of the Act
5.	Disposal of the first appeal	The CCE (Appeals) shall hear and determine the appeal and pass the necessary orders [including an order for enhancing the service tax, interest or penalty]. However, according to proviso to Section 85(4) an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.	Section 85(4) of the Act

- (ii) **Appeals to Appellate Tribunal:** According to the provisions of **section 86(1)** of the Act any person aggrieved by an order passed by a **CCE** under section 73 or section 83A or an order passed by a **CCE (Appeals)** under section 85 may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order. The said appeal is also known as “**Second Appeal**”. It is worth mentioning here that the right of second appeal is available both to the assessee as well as to the department. The other relevant provisions are given in the following table:

S. No.	Suitable Sub-Heading	Particulars/Details	Relevant Statutory Provisions, if any
1.	Prescribed Form for filing the second appeal	ST-5	Section 86(1) of the Act read with Rule 9(1) of STR, 1994
2.	How many copies of the appeal are to be filed	Four	Rule 9(2) of STR, 1994
3.	Time Limit for filing the second appeal by Department	With effect from 28.05.2012, within four months of the date on which the order	Section 86(3) of the Act

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		sought to be appealed against is received by the Committee of Chief Commissioners or Committee of Commissioners. On the other hand, an assessee is required to file appeal to the Tribunal within three months from the date of receipt of the order in terms of Section 86(1) of Finance Act, 1994.	
4.	Filing of Memorandum of Cross-Objections	If one party files an appeal then the other party can file a Memorandum of Cross Objections within 45 days of the receipt of the relevant notice regarding filing of appeal.	Section 86(4) of the Act
5.	Power to condone delay in filing the second appeal or Memorandum of Cross-objections	The Appellate Tribunal may condone the delay in filing the appeal or Memorandum of Cross Objections if it is satisfied that there was sufficient cause for not presenting the said appeal or Memorandum within the stipulated time.	Section 86(5) of the Act
6.	Powers and Procedure	In hearing the appeals & making the orders under this section the Appellate Tribunal shall exercise the same	Section 86(7) of the Act

		powers and follow the same procedure as it exercises & follows in hearing the appeals and making orders under the Central Excise Act, 1944	
7.	Fees	Quantum of Service Tax, Interest & Penalty demanded	Amount of Fee payable
		₹5,00,000 or less	₹1,000
		More than ₹ 5,00,000 but not exceeding ₹50,00,000	₹5,000
		More than ₹50,00,000	₹10,000
8.	Fees to be paid by an assessee in case of an appeal for grant of stay etc.	₹500/- in case of application for grant of stay or for rectification of mistake or for any other purpose including restoration of an appeal. However, the aforementioned fee of Rs, 500/- is not required to be paid in case the department files an appeal for said grant of stay etc.	Section 86(6A) of the Act
9.	Enclosures with ST-5	(i) Application for stay on legal size paper with double spacing	-----

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		(ii) Order in original (in first set, original copy to be enclosed and with the remaining four sets, photocopy of the original order to be enclosed on legal size paper) (iii) Copy of the relevant SCN (iv) All supporting and Relied Upon Documents duly certified by the appellant.	
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Question 12

Whether in each of following independent cases the relevant assessee will be punishable:

- (i) Mr. Mihir provides Consulting Engineer's Services of ₹60 lakhs during the month of July, 2012 and knowingly evades the payment of service tax.
- (ii) Mr. Sanjay avails and utilizes credit of taxes of ₹45 lakhs during the quarter ending September, 2012 without actual receipt of taxable service in violation of the rules made under the provisions of Chapter V of Finance Act, 1994.
- (iii) Mr. Ramesh fails to supply any information [having financial implications of ₹52 lakhs] which he was required to supply under Service Tax Rules, 1994.
- (iv) Miss Kanika collected service tax of ₹50 lakhs in the month of May 2012 but did not deposit the said amount until 31st March, 2013.

Answer

W.E.F.08.04.2011 the prosecution provisions have been reinserted vide section 89 of Finance Act, 1994. In the light of foregoing reinserted section 89, each of the given case has been discussed as under:

- (i) According to provisions of Section 89(1)(a) of Finance Act, 1994 with effect from 28.05.2012 whoever knowingly evades the payment of service tax under this chapter shall be punishable with imprisonment depending upon the amount involved.

Since in the given case Mr. Mihir has provided Consulting Engineer's Services of ₹60 lakhs during the month of July, 2012 and knowingly evaded the payment of service tax he shall be punishable with imprisonment. Further, as the amount involved in the offence exceeds ₹50 lakhs, Mr. Mihir can face imprisonment upto three years in accordance with provisions of Section 89(1)(i) of Finance Act, 1994.

- (ii) According to provisions of Section 89(1)(b) whoever avails and utilizes credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V of Finance Act, 1994, shall be punishable with imprisonment depending on the amount involved.

As in the present case Mr. Sanjay avails and utilizes credit of taxes of ₹45 lakhs during the quarter ending September, 2011 without actual receipt of taxable service in violation of the rules made under the provisions of Chapter V of Finance Act, 1994, he shall be punishable with imprisonment as per provisions of Section 89(1)(b). Besides, as far as period of imprisonment is concerned since the amount involved in this offence does not exceed ₹50 lakhs, Mr. Sanjay can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

- (iii) According to provisions of Section 89(1)(c) whoever maintains false books of accounts or fails to supply any information which he required to supply under this Act or rules made thereunder or [unless with a reasonable belief, the burden of providing which shall be upon him, that the information supplied by him is true) supplies false information, shall be punishable with imprisonment depending on the amount involved.

As in the present case Mr. Ramesh fails to supply any information which he was required to supply under Service Tax Rules, 1994, he shall be punishable with imprisonment as per provisions of Section 89(1)(c). Besides, as far as period of imprisonment is concerned since the amount involved in this offence exceeds ₹50 lakhs, Mr. Ramesh can be sent for imprisonment up to three years as per provisions of Section 89(1)(ii) of Finance Act, 1994.

- (iv) According to provisions of Section 89(1)(c) whoever collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable with imprisonment depending on the amount involved.

As in the present case Miss Kanika collected service tax of ₹50 lakhs in the month of May 2012 but did not deposit the said amount until 31st March, 2013, she shall be punishable with imprisonment as per provisions of Section 89(1)(d). Besides, as far as period of imprisonment is concerned since the amount involved in this offence does not exceed ₹50 lakhs, Miss Kanika can be sent for imprisonment up to one year as per provisions of Section 89(1)(ii) of Finance Act, 1994.

Exercise

1. Write a short note on provisional attachment to protect revenue in certain cases.
2. Briefly explain the provisions for publication of information in respect of persons in certain cases.