

Other Provisions

Question 1

Under what circumstances premises of an assessee may be searched and by whom ?

Answer

According to provisions of **Section 82(1)** if the **Joint Commissioner** of Central Excise has reason to believe that any **documents or book or things** are secreted at any place, which in his opinion will be useful for any proceedings under this Act, he may **authorize any Superintendent** of Central Excise **to search for and seize** or he may himself search for and seize such documents or books or things.

Question 2

What are various modes of recovery of any amount due to Central Government?

Answer

According to provisions of Section 87 Central Government can make recovery of any amount due to it by **any one of the following modes**, namely:-

- (i) **Central Excise Officer [hereinafter abbreviated as “CEO”] may deduct or may require any other CEO or any Custom Officer to deduct the amount payable to the assessee**

Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs.

- (ii) **CEO require any other person from whom money is due or may become due to assessee**

Central Excise Officer may require any other person from whom money **is due or may become due** to such person, or **who holds or may subsequently hold** money for or on account of such person, to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person.

- (iii) **CEO may restrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid**

Central Excise Officer may, on an authorization by Commissioner of Central Excise, in accordance with the rules made in this behalf, restrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid.

- (iv) **CEO may prepare a certificate and send it to the Collector of the district to recover the amount if it were an arrear of land revenue.**

Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

Question 3

Ms Garima Arora is a practicing chartered accountant. She made self-assessment of her Service Tax liability as ₹ 15,45,000/- for the quarter ending 30.06.2012. However, she did not make any payment of foregoing self-assessed tax until 31.03.2013. The said fact came to the notice of the Service Tax Department. How can the Department recover the aforementioned amount of service tax from Ms Garima Arora ? It is also to be noted that value of taxable services provided during the last financial year was ₹ 1.25 crore.

Answer

In the given situation the department has to resort provisions of Rule 6(6A) of Service Tax Rules, 1994. The foregoing Rule 6(6A) provides that where an amount of service tax payable has been self-assessed under section 70(1) of Finance Act, 1994, but not paid, either in full or in part, the same shall be recoverable with interest in the manner prescribed under section 87 of Finance Act, 1994.

As in the present case Ms Garima Arora has not paid in full her self-assessed service tax of ₹ 15,45,000/-, the Department can recover the foregoing amount of Service Tax along with interest in accordance with Rule 6(6A) of Service Tax Rules, 1994. The rate of interest will be decided on the basis of value of taxable services provided during the last financial year. Since the value of taxable services provided by Ms Garima exceeded ₹ 60 lakhs, she will not be termed as Small Scale Service provider and consequently interest will be charged at the rate of 18% p.a. for the period of delay.

Question 4

MNL Ltd. did not pay its service tax dues of ₹ 40 lakhs for the period ending 30.09.2012. Can the Department create first charge on the property of MNL Ltd ? If your answer is affirmative, whether there are any limitations in respect of creation of such first charge ?

Answer

According to provisions of section 88 of Finance Act, 1994 any amount of **tax [substituted for the word “duty” by Finance Act, 2012 with effect from 28.05.2012]**, penalty, interest or any other sum payable by an assessee or any other person shall be the first charge on the property of the assessee or the person, as the case may be. Thus, the Department can create first charge on the property of MNL Ltd for recovery of service tax dues of ₹ 40 lakhs.

8.3 Indirect Tax Laws

However, the aforementioned first charge can be created subject to the provisions of following specified Acts:-

- Companies Act, 1956 (Section 529A)
- Recovery of Debt due to Bank and Financial Institution Act, 1993; and
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002

Question 5

Mention the issues on which an advance ruling can be sought in service tax matters.

Answer

As per section 96C of Finance Act, 1994 an advance ruling can be sought in the following matters:

- (a) classification of any service as a taxable service under Chapter V;
- (b) the valuation of taxable services for charging service tax;
- (c) the principles to be adopted for the purposes of determination of value of the taxable services under the provisions of Chapter V;
- (d) applicability of notifications issued under Chapter V;
- (e) admissibility of credit of duty or tax in terms of the rules made in this regard;**
- (f) determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

Question 6

When does an advance ruling on service tax become void ab initio?

Answer

Section 96F of Finance Act, 1994 provides that if the Authority of Advance Ruling finds, on a representation made to it by the Commissioner of Central Excise or otherwise, that an advance ruling has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio.

Question 7

What are the prevailing audit norms for service tax assessees ?

Answer

The audit norms prescribed by Service Tax Audit Manual, 2010 are given in the following table:

S.No.	Quantum of annual total service tax payment in (cash + CENVAT Credit) in preceding financial year	Frequency of Audit
1	Tax payers paying more than ₹ 3 Crores	Every year
2	Tax payers paying between ₹ 1 crore and ₹ 3 crores	Once in 2 years
3	Tax payers paying between ₹ 25 Lacs and ₹ 1 Crore	Once in 5 years
4	Tax payers paying below ₹ 25 Lacs	2% of taxpayers to be audited every year

It has been further specified in above-mentioned Audit Norms that preferably Audit should be done by using **Computer Assisted Audit Program (CAAP) techniques**.

Exercise

1. What are the powers of the Central Government to grant exemption from service tax.
2. What do you understand by Advance Ruling? On whom Advance Ruling is binding ?