













(An inhouse weekly newsletter for private circulation)

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	FROM EDITOR'S DESK	
<p>Dear Readers,</p> <p>This is the last newsletter before the Union Budget 2009-10 which is to be announced on next Monday, the 6th July 2009. While we shall be covering the budget highlights in the next issue which will be a budget special, there are certain issues in GST which need to be address by the Government before a road map is finalized. We are also of the view that GST should not be levied in a haste and the country should be given adequate time for understanding it and its</p>		

smooth implementation.

Date: 29.06.2009

- Dr. Sanjiv Agarwal



UNDERSTANDING SERVICE TAX LAW

(Provides Understanding of Legal Issues)



Continued from last issue..

FAQs on Import of Services issued by CBEC

14 Service Tax on receipt of services from outside India [Import of services]

14.1 What is the statutory provision regarding taxing of services provided from outside India and received in India?

Section 66A of the Finance Act, 1994, inserted with effect from 18.4.2006, provides that where any taxable service is provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and is received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall be taxable service.

14.2 Is the recipient of service liable to pay tax for the taxable service is provided

from outside India?

The recipient of service shall be liable to pay tax if the provider of service do not have any established business or a fixed establishment in India. However, a person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country (including India).

14.3 Where provider of the service has his business establishments in more than one country, which country should be treated as the country from which service is provided?

If the provider of the service (from outside India) has his business establishments in more than one country, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided. (Ref.: Section 66A (2) of the Finance Act, 1994.).

14.4 What will be 'usual place of residence' of a body corporate?

Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted. (Ref.: Explanation 2 to sub-section 2 of Section 66A of the Finance Act, 1994.)

14.5 What constitutes import of services?

The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 specifies 3 categories of cross border transaction of services and conditions that will be construed as import of services, namely,

(i.) specified services which are provided in relation to immovable properties situated in India - (Ref. Rule 3(i) of The Taxation of Services Rules 2006).

(ii.) specified services which are provided partly in India (Ref. Rule 3(ii) of The Taxation of Services Rules 2006).

(iii). the remaining taxable services, barring a few exceptions, when provided in relation to business or commerce, to a recipient located in India. (Ref. Rule 3(iii) of The Taxation of Services Rules 2006).

Thus, each transaction has to be seen individually to ascertain if it constitutes import of services, fulfilling the requisite parameters.

(to be continued)



Service Tax : Budget



GOODS AND SERVICE TAX – ISSUES REQUIRING BUDGET ATTENTION

Dr. Sanjiv Agarwal, FCA, FCS, Jaipur

On indirect tax front, India is all set to usher into the era of a all new tax to be called ‘goods and services tax’ (GST) which will bring in India at par with over 140 developed nations of the world. It is going to be the biggest ever tax reform in independent India. World over, goods and services attract the same rate of tax. This is the foundation of GST. Earlier in February 2009, Finance Minister made a statement in budget speech that GST is a critical part of our economic reforms.

So far as GST is concerned, this budget offers an unique opportunity to clearly spell out the blue print or load map for GST in India . Over last four budgets, Finance Minister’s have been making a statement on need for GST that there is a large consensus that country should move towards a national level GST which should be shared between the centre and the states. Though the earlier budgets talked about April 2010 as the probable date of implementation of GST, one needs a relook and a practical and clear view is desirable alongwith strong political will, given the fact that we have different states, ruled by different political parties. Unlike VAT, GST has to be implemented in one go. Once GST is clear, CST (central sales tax) needs to be phased out.

Goods and service tax (GST) is a comprehensive value added consumption based tax on goods and services wherein tax will be collected at every stage of value addition with cenvat credit mechanism to avoid cascading effect. GST is not going to be an additional new tax but will replace other taxes. It being so, cost of product or service will not be affected due to GST.

Under GST, the format will change and central taxes (CST, excise, customs, service tax) shall be subsumed into one. Also, sharing between centre and states will be there mere with a major shift in sharing pattern. In fact, GST will change the tax horizon of the country for the good. GST will also provide an opportunity to policy makers to follow principle of certainty and have clear cut defined exemptions, concessions, non taxable areas and services so as to avoid confusion and litigation .

While it will be premature to comment upon GST’s post implementation issues, what is more important is time frame, minimum tax slabs and tax structure.

The rate of GST is not yet final and various state governments are discussing it. While the indications of a dual GST structure look bright, unified GST would be preferred by assesseees as it would be cost effective and provide efficient mechanism . Dual GST is not for which India is looking for. It will only increases complexities in already too complex and multiplex taxation system in India. In such a case, sharing formula could be devised between centre –states.

There are disagreements on rate and structure and compensation to states. Users and assesseees would also require training and education on GST, besides review of supply chain, computerization, transitional issues .

Government also needs to address issues such as treatment of levies (octroi, stamp duty, state excise etc) as any exclusion from GST would again lead to many taxes and defeat the objective of comprehensive GST. Ideally,

alongwith transitional provisions concerning input tax credit, pending demands and litigation, government will have to exempt or provide level playing field for projects and contracts with periods spanning over more than a year as in such cases, migration would be difficult and some cut off arrangement will have to be worked out. Obviously, as of now, all such contacts must be silent on this issue and may create a bottleneck between parties to contract.

In GST regime, there will be no place for duties like additional custom duty or special additional duties or cess. It needs to be cleared as to what would happen to issues involving stock transfers, inter state transfer, cross border taxation of service, taxation of service etc. Issues on Cenvat credit, place of taxation , timing of taxation and person liable- all are relevant and crucial . What all taxes will be subsumed in GST should be made clear.

India needs to take well thought of steps in implementation of GST and it should not be implemented hurriedly. It is still not clear about the final approach to be taken- unified GST or dual GST as also levy of GST on supply or on sale point. We also need to take all the stakeholders into confidence such as state governments, trade & industry, service providers & service recipients, consumers and professionals.

Eying at April, 2010 may be a very optimistic and ambitious target but before that, we need reasonable time to test run the GST, understand the system and tax structure and even the costs of implementation. Even the administrative preparations will take some time. Though we will have nine months time from July 2009 to reach the already announced date of April 2010, the road map is still not in place.

The GST is bound to come. It should - as early as possible, but not in a haste. It would be desirable to wait for a year more and implement it with full preparedness in 2011 or 2012, if not in 2010.



NEWS ROOM

(News on Service Tax/GST which matters)



GST rollout in troubled waters

Key roadblock: Constitutional amendment required to provide wider taxation powers to Centre, States

With only nine months remaining before the proposed implementation of the Goods and Services Tax (GST) , building a consensus on amending the Constitution to provide wider taxation powers to both the states and the Centre is emerging as the key roadblock in implementing this pan-India tax.

This is the basic building block before GST can be rolled out, since the states don't have the powers to tax services and the Centre can't levy tax on goods produced beyond the factory gate.

Referring to the timeline for amending the Constitution, Govinda Rao, Director of National Institute of Public Finance and Policy (NIPFP), a Delhi-based economic research institution, said: "You cannot do this by April"

Under the Excise Act, the Centre has power only to levy tax till the factory gate: To cover the transaction between the factory gate and final point of sale, the Constitution needed to be amended to empower the central government to levy GST.

Rao, who is also a member of the Prime Minister's Economic Advisory Council, has now written to Prime Minister Manmohan Singh saying it's better to delay the implementation of GST rather than roll it out in a hurried fashion.

The point about sharing tax powers between the Centre and the states was also recently raised by Finance Minister of Tamil Nadu, who said the GST should not erode the states' fiscal autonomy and said the April 1, 2010 deadline is Premature and hurried.

The idea of a combined GST was first proposed by a committee headed by Rao. The report titled "Final report of the expert committee on taxation of services" was submitted to the Finance Ministry in March 2001, and one of the recommendations was to introduce a tax similar to GST.

The aim to GST is to have one uniform tax and do away with multiple taxes like excise duty, central sales tax and

services tax, so that tax administration and payment can be done easily. At present, a few taxes on finished products at the state level cannot be set off against tax paid on inputs. This leads to a cascading effect of taxes on the final product. Another point raised by Rao, one of the leading experts on public finance, is that tax reforms should be introduced when the economy is doing well, just as the Value Added Tax (VAT) was introduced in 2005. "It would be bad timing to introduce GST when the economy is slowing down," he said.

Capturing inter-state transactions

Under GST, it's the end-consumer who finally pays the tax. For example, a producer who pays tax on inputs can set it off against tax paid on the final product. So, the tax paid by this producer is only on his value addition.

Thus in this consumption based tax, capturing inter-state transactions is important. The progress here, however, is tardy and no information has been provided so far by the empowered committee of state finance ministers on how this will be tackled.

At present inter-state transactions are taxed under Central Sales Tax (CST), which was supposed to be reduced to zero by April 2010, from 2 per cent.

(Source: Business Standard, dated 29 June 2009)

GST unlikely to keep its date with April next year

The Centre may delay the rollout of the unified goods and services tax (GST) by one year, with several state governments raising reservations about the feasibility of the April, 2010 deadline. It is contemplating a new road map for rolling out GST, which is aimed at unifying the fragmented Indian market by getting rid of multiple state-specific levies and differences in tax rates, a government official said.

The Madhya Pradesh, Chhattisgarh and Tamil Nadu governments have cautioned against rushing the rollout of the new tax regime, said the official, who asked not to be named. The Centre will take a final decision on having new timelines in consultation with the empowered committee of state finance ministers, said the official who is privy to the development. Tax experts had warned the government against the hurried implementation of the new tax regime.

The proposed GST will integrate most of the indirect taxes on goods and services at the state and central levels. Indirect taxes are those where the incidence of tax is usually not on the person who pays the tax. These are largely taxes on expenditure and include value-added tax, excise and service tax. GST will bring all these taxes under one head that will be levied at the point of sale, instead of the point of origin.

The empowered committee, which has been entrusted with the job of formulating the GST structure has set a deadline of August for finalizing the same. However, experts say that even after the nitty-gritty of the structure is finalized in August, the drafting of legislation and rules and the enactment of the law will take time.

(Source: The Economic Times dated 29 June 2009)



LEGISLATIVE ROUNDUP

(Brief commentary on recently reported cases)



CENVAT CREDIT

CST v Convergys India (P.) Ltd.

[2009] 20 STT 1 (NEW DELHI-CESTAT)

[SERVICE TAX APPEAL NO. 432-433 OF 2007, DATED 18.5.2009]

There cannot be two different yardsticks, one for permitting credit and the other for eligibility for granting rebate;

whatever credit has been permitted to be taken, the same are permitted to be utilized and when the same is not possible there is provision for grant of refund or as rebate; without questioning the credit taken, the eligibility to rebate cannot be questioned ; input service used in connection with procurement of other input services have to be treated necessarily as input services; late filing of the declaration relating to the rebate claim as per notification No. 12/2005-ST, dated 19.04.2005 is only a procedural lapse and the non-fulfilment of the same cannot lead to denial of the benefit under the beneficial legislation providing for export benefits



FROM THE GOVERNMENT



[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 15 /2009-Central Excise (N.T.)

New Delhi the 10th June, 2009

G.S.R. (E).- In pursuance of rule 12CC of the Central Excise Rules, 2002 and rule 12AA of the CENVAT Credit Rules, 2004 , the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 32/2006-Central Excise (N.T.), published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section(i), vide number G.S.R.782(E), dated the 30th December, 2006, namely,-









In the said notification,








- (i) In paragraph 1, after clause (f), the following shall be inserted:-
“(g) removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the CENVAT Credit Rules, 2004.”;
- (ii) In paragraph 2, in sub paragraph (1),-
- (a) after clause (ii), and before the proviso, the following clauses shall be inserted, namely,-
“(iii) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken;
(iv) the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.”
- (b) after explanation II, the following Explanation shall be inserted, namely:-
“Explanation III.- For the purposes of this paragraph, “principal inputs”, means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.”

[F.No.213/13/2008-CX-6]

(Mallika Arya)
Director, Central Excise

Note.- The principal notification number 32/2006-Central Excise (N.T.) dated the 30th December, 2006 was published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section(i), vide number G.S.R.782 (E), dated the 30th December, 2006.

	OBLIGATIONS FOR THE WEEK	
<ul style="list-style-type: none"> ▪ Payment of Service Tax for the month of June 2009 (other than individuals and firms) in GAR-7 by 5th July (6th for e-payment) ▪ Payment of Service Tax for the quarter ending June 2009 (for individuals and firms) in GAR-7 by 5th July (6th for e-payment) 		
	Problems in Service Tax	
<p>Query Revision of Cenvat Returns</p> <p>Returns are required to be filed under rule 9(9) and 9(10) of Cenvat Credit Rules, 1994. Whether we can revise the returns so filed as in case of other service tax returns?</p> <p>Reply Vide Notification No. 10/2007-CE(NT) dated 1.3.2007, w.e.f. 1.3.2007, Rule 9(iv) has been inserted in Cenvat Credit Rules, 2004 to provide for revision of returns filed under Rule 9(9) or 9(10).</p> <p>Revised returns can be filed by provider of output service availing CENVAT credit or input service distributor, in order to correct or rectify a mistake or omission within a period of sixty days from the submission of original return. The revised return must disclose the fact that it is a revised return and it should be filed only as an outcome of a mistake or omission. The same form as that of original return is required to be used for filing the revised returns.</p> <p><i>Do you have any doubt or query on Service Tax? Why not seek an expert reply from STC. Email your query to asandco@gmail.com</i></p>		
	LITERATURE / EVENTS	
<ul style="list-style-type: none"> • GST will provide govt perfect platform to address tax issues- Harishanker Subramaniam, The Financial Express, dated 24 June 2009 • Service tax on alcoholic products- S Madhavan , Business Standard, dated 29 June 2009 • Need for advance ruling in transfer pricing issues – H.P.Aggarwal, Business Standard, dated 29 June 2009 • Renting of immovable property –Gaurav Gupta, Service Tax Today, Vol 20, dated 25.06.2009 • Service tax procedures- Sanjiv Agarwal, Service Tax Today, Vol 20, dated 25.06.2009 		
	TIP FOR THE MONTH	
<p style="text-align: center;"><i>Get due diligence / compliance audit for service tax in your organization to ensure total compliance with law, procedures etc and correct utilization of Cenvat credit</i></p>		

	<h2 style="color: red;">QUOTE OF THE WEEK</h2>	
<p><i>Wining doesn't always mean being first, wining means you are doing better than you have done before- Connie blair</i></p>		
	<h2 style="color: red;">Humour of the Week</h2>	
<p><i>Father - You are sitting idle these days. Why don't you start your business soon. You know, time lost is money lost.</i></p> <p><i>Son - Father ! I know that. I am only waiting for the budget to be out so that I can plan and decide which business to do. They have a track record of adding more services every year</i></p>		
	<h3 style="color: red;">Announcements</h3>	
<p><i>For corporate training programmes on service tax, kindly contact Dr.Sanjiv Agarwal at sanjiv_servicetax@gmail.com or ica@karvy.com</i></p>		
<p>=====</p>		
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