

SERVICE TAX MASTER CIRCULARS – A REVIEW

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The Service Tax law following the draconian Central Excise methodology had numerous circulars issued by the Board, Chief Commissioners, Commissioners which led to confusion as also revenue losing cases due to this reason. A part of the reform process has been to reduce circulars. In 2007, two circulars were issued in service tax in order to clarify the procedural issues faced by assesseees as also certain technical issues as well under service tax. The two separate circulars issued for this purpose were Circular 97/6/2007 ST dated August 23, 2007 on procedural issues and Circular 96/6/2007 ST dated August 23, 2007 clarifying technical issues under service tax. The assessee would be better off following the provisions stated in the Finance Act and the relevant set of rules and refer these circulars only where information is not available in the Finance Act/rules. In this article, we look at these two circulars separately with the *discussion being on areas where the circulars differ from the earlier circulars/clarifications/instructions or the rules.*

Circular 96/6/2007 ST dated 23.08.07 – Clarification on technical issues

This circular consolidates the procedural issues under service tax and supersedes all previously issued circulars, instructions and clarifications issued on the same subjects. The circular would however not prevail over the provisions stated in the relevant Rules or the Finance Act or the orders issued u/s 37B of Central Excise Act 1944 as made applicable to service tax.

Canvassing advertisements for publishing on commission basis

The earlier circular regarding the subject (78/8/2004 ST dated 23.03.04) was withdrawn in 2007. The new circular now holds the activity of mere canvassing advertisements for publishing on commission basis, as taxable under Business Auxiliary Service. This should also be seen in light of the activity of selling space and time which is liable under the category of Advertisement – Sale of space or time services which *excludes sale in print media* (excluding trade catalogues/business directories/yellow pages for commercial purposes) and sale of time slots by broadcasters. The question of taxing the activity under Advertising Agency Services could arise where the definition of “advertising agency” can be satisfied.

Consulting engineer self-employed

Even such engineer would be liable to service under the category of consulting engineer provided he satisfies the conditions set out there under. This is being clarified again as the earlier circular

34/2/2001 CX dated 30.04.01 was withdrawn in 2007.

Fees charged by educational institutions like IIMs and IITs from corporates for campus interviews/recruitments

Circular 86/4/2006 ST dated 01.11.06 had left the issue open to determination on the basis of a study of facts and circumstances of each case. However, such institutions have now been sought to be made liable by this circular.

Whether money changing liable to service tax?

Circular 92/3/2007 ST dated 12.03.07 had sought to distinguish between money changing and foreign exchange broking and held foreign exchange broking as liable. This has now been simplified by stating that where no separate commission or brokerage is charged, there would be no liability to service tax. The commission or brokerage should be in addition to buying or selling of currency at specified rates.

Whether entry and exit load charged by mutual funds liable?

Entry load and exit load charged by a mutual fund are generally not for the purpose of management of assets. Thus, amount charged as “entry and exit load” are not to be treated as consideration received by an Asset Management Company for asset management and hence not liable to service tax under Banking and other Financial service as per this circular.

Whether chit funds liable to service tax?

Circular 41/4/2002 ST dated 15.03.02 had clarified that activities of chit funds were in the nature of cash management and accordingly, the activity of chit funds was not liable to service tax. This was before the amendment in the banking and other financial services category with regard to cash management. This has now been broken up to distinguish between simple chit funds and business chit funds. Business chit funds would be liable as service is generally for a consideration. Simple chit funds would not be liable where there is no consideration for service rendered.

Sale of spare parts as well as usage of consumables in servicing by a service station

The circular 699/15/2003 CX dated 05.03.03 had stated that the value of consumables used in servicing were not to be included in value for charging service tax as generally these were sold. But this circular seeks to determine the issue on the basis of a study of facts and circumstances of each case. Service tax is not charged on goods sold and subject to payment of VAT/sales tax. Where the goods cannot be regarded as having been sold, the value of such goods would have to be included for the purpose of charging service tax but the service station would be entitled to cenvat credit on such

goods qualifying as inputs. Credits would also be available on input services if any.

Construction of complexes-question of service being involved

The position as to construction activity has been clarified to state that where a contractor is hired by the builder or promoter / developer to build the complex, the contractor in his capacity as the service provider would be liable to pay service tax. Where the builder / developer / promoter undertakes construction on his own, the service provider and service recipient relationship does not exist and question of service tax does not arise. (Note that in this case service tax would be charged if the builder undertakes construction on some one else's behalf and not on his own account).

Travel by air for international journey

Where ticket is issued outside India for an international journey commencing from India, it has been clarified that service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class. Transit passengers however would be excluded as per definition given under the said category.

Works contracts and credit under composition scheme

The confusion created by MF (DR) Letter DOF 334/1/2007 TRU dated 28.02.2007 regarding inadmissibility of credits of service tax on input services and duty on capital goods has been cleared. Thus, there is no restriction to take CENVAT credit of duty paid on capital goods and service tax paid on input services where the service provider opts for the composition scheme.

The position regarding statutory duties of government agencies/bodies

There would be no service tax on collections on account of statutory duties. The question of service tax would arise only where certain consideration is charged for an activity other than a statutory activity and the fee collected is not a statutory fee, in respect of such agencies/bodies.

Service provided by the Department of posts

Services other than basic mail and transfer of money through money orders, operation of savings accounts, pension payments and issue of postal orders can now be taxed under appropriate heads.

Sub-contracting

This circular has also changed the position regarding taxability of service provided by a sub-contractor where the service is sub-contracted by the main service provider. TN 5/98 of Indore Commissionerate had exempted the sub-contractor from payment of service tax where the principal service provider

paid service tax on the services provided to the client and the sub-contractor was in the same service category as the principal. The sub-contractor would now be required to register under service tax in order to avoid litigations with the department.

Circular 97/6/2007 ST dated 23.08.07 on Procedural Issues

This circular consolidates the procedural issues under service tax and supersedes all previously issued circulars, instructions and clarifications issued on the same subjects. The circular would however not prevail over the provisions stated in the relevant Rules or the Finance Act.

Registration

The circular has clarified certain matters while remaining silent regarding some of the other issues. This circular specifically talks about the person who pays service tax by virtue of section 68(2) of Finance Act and his requirement to register. The persons covered apart from the service provider are as follows -

- insurer in case of service provided by insurance agent
- person making payment of freight in cases where a goods transport agency provides taxable service to a specified consignor and consignee
- asset management company or mutual fund, in case of service provided to them by a distributor
- where the service is provided to a person in India by any person from another country
- body corporate or a firm located in India receiving sponsorship service.

The circular also clarifies the manner in which an existing registrant may add any new premises to the centralized registration or add new taxable services in his registration certificate or amend it as regards any other detail. This may be providing such details to the jurisdictional Superintendent in Form ST-1, indicating only the amendment/rectification required to be made in the registration certificate, along with a copy of the original registration certificate. Changes relating to deletion of any premises or taxable service, may be done by filing an intimation on plain paper along with copy of the registration certificate.

The circular is silent regarding the option to surrender Registration Certificate on an increase in the threshold limit which had been covered earlier by TN 9/2007 ST dated 07.03.07 issued by Chennai Commissionerate.

Mandatory E-Payment of service tax

The circular contains a reference to problems faced by the assesseees in this regard and requires them

to contact the jurisdictional service tax/ central excise office or the jurisdictional Commissioner, who would advise and extend all possible help to such taxpayers to comply with the requirement of mandatory e-payment. The reference to lenient view to be taken by authorities in the initial stages as stated in Circular 88/06/2006 ST dated 06.11.06 has been omitted and assesseees may now be penalised for not making payments in time which would once again have to be seen in light of section 80 which covers reasonable cause for delay.

Issuance of invoice/bill/challan etc.

The circular specifically talks about the segregation of the education cess and secondary and higher education cess from the basic amount of service tax for ensuring compliance with Cenvat Credit Rules 2004. Thus, a service bill should contain break up of basic amount of service tax in addition to education cess and SHE cess even though Rule 4A of Service Tax Rules 1994 talks of details of service tax payable to be disclosed.

Vehicle registration number

The circular also talks of the procedure to be adopted to quote vehicle numbers in case of less container load cargo and in cases of transshipment. The details of the vehicle carrying the goods are to be maintained by the agency consignment wise, as soon as the vehicle is identified and entered in the records maintained by such agency. In all other cases, the numbers are to be quoted on the consignment note handed over to the consignor. Rule 4B of Service Tax Rules 1994 is silent regarding details to be maintained by GTA in case of LCL cargo and transshipment and talks only of issue of consignment note.

Filing of returns

The circular also consolidates and presents the requirement pertaining to filing of returns. The requirement to file the return would be on the person liable to pay tax. For this purpose, one would have to refer the relevant set of rules with sections 69 and 70. The circular also talks of the input service distributor filing the ST 3 return. However, in this case, filing would be as per Rule 9(10) of Cenvat Credit Rules 2004 (i.e within last day of the month following the half year for which the return is being filed).

The circular has also simplified the process for applying for e-filing of return. All the assessee has to do is to send a simple application to the jurisdictional Central Excise Officer with his e-mail ID and STC number. The details as to the user ID and password needed for accessing the designated site

and to file returns along with the technical details would be communicated to the assessee through e-mail. In case of difficulties in filing, he may send an e-mail to the address specified by the commissioner and where a reply is not received within 2 days, send an e-mail to saps@excise.nic.in

It is important to note that the relaxation pertaining to filing for the first time as covered in Circular 71/1/2004 ST dated 02.01.2004 relating to non-invoking of section 77 of Finance Act, is absent in this circular and delay in filing would attract late filing fees as prescribed in Rule 7C of Service Tax Rules 1994. Moreover, the late fee should also be paid at the time of filing of the return though non-submission of evidence for payment of such fee cannot be a ground for refusing acceptance of return by the officer having jurisdiction.

Cenvat credits

The circular specifically seeks to disallow availability of cenvat credit for the purpose of payment of service tax in respect of GTA service by not regarding the service in question provided by the GTA as an output service. This circular seems to have ignored the fact that many a time manufacturers may use the GTA service in relation to clearance of manufactured goods from the factory in which case the service received would qualify as an input service as per Cenvat Credit Rules 2004 and concentrates on the theory of restricting service tax on outward freight up to the place of removal. Whether the stand adopted by the department would prevail is something that would be known in due course of time.

The circular has however clarified that credit of service tax paid would be available where the same qualifies as input service whether such amount has been paid by the service receiver as consignee or by the consignor or even by the GTA. Thus the fact that payment has been made by a person other than the consignee would not be a restricting factor.

Credit of service tax on mobile telephone service is also admissible subject to the definition of “input service” being satisfied.

The common/ main issues dealt in by the circular have been discussed in this article.