

Point of taxation – Bad debts?

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With the introduction of Point of Taxation Rules, 2011 with effect from 01.04.2011, the whole gamut of payment of service has to undergo serious changes and business practices have to be retuned to suit the rules.

As per Rule 6 of the Service Tax Rules, 1994, as amended vide Notification 3/2011,

The service tax shall be paid to the credit of the Central Government, -

(i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and

(ii) by the 5th day of the month, in any other case,

immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard.

Point of Taxation is defined under Rule 2 (e) of the Point of Taxation Rules, 2011 as "point of taxation means the point in time when a service shall be deemed to have been provided".

Rule 3 of the said Rule provides, how the point of taxation has to be determined. According to sub rule (a) of the said rule a provision of service shall be treated as having at the time when service is provided or to be provided. Before the above point of time if an invoice is raised or payment is received, the time of issue of invoice or time of receipt of amount would be the point of taxation. In other words, out of the three events (i) provision of service ; (ii) issue of invoice; and (iii) receipt of amount, whichever happens first shall be the point of taxation and service tax has to be paid accordingly. (What is the time when service is to be provided?)

As per Rule 6 (3) of the Service Tax Rules, 1994, as amended by Notification 3/2011, if any invoice is issued or payment is received (accordingly service tax also would have been paid) but the service was not provided, the service tax paid can be taken as credit adjusted against any other liability.

As per Sub rules (4A) and (4B) of Rule 6, any excess payment of service tax, which is not due to any interpretation, taxability, classification, valuation or applicability of any exemption, can be self adjusted upto Rs.2,00,000. The said rules are reproduced below.

(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely :-

(i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,

(ii) excess amount paid by an assessee registered under sub-rule (2) of rule 4, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,

(iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit two lakhs rupees for a relevant month or quarter, as the case may be,

(iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

It may be observed from the above,

- (a) Service tax is a levy on services provided or to be provided.
- (b) Service tax is payable at the Point of Taxation, as defined.
- (c) If service is not provided, either wholly or partly, but service tax has already been paid, such service tax paid can be availed as credit and used for any other service tax liability.
- (d) Other excess payments can be adjusted upto Rs.2,00,000 (No limit for centralised registration).

But, there are no provisions if service tax has already been paid but the payment has not been received. For example, if the service is already provided and the invoice has also been issued, service tax would have been paid on the same, at the time when the service is provided or at the time when the invoice is raised, whichever is earlier. But if the payment is not at all received subsequently, there is no provision to claim adjustment / refund of the service tax already paid. Such service tax could not be covered under Rule 6 (3) of the Service Tax Rules, 1994 as the service has been provided. It cannot be covered under Rules 6 (4A) / (4B), as it is not a case of any excess payment of service tax. The service has been provided and hence the taxable event has happened. As the point of taxation has also occurred, service tax has also been paid. So, it is immaterial, whether the payment is received or not. Shocking? But true.

If we take the case of Excise or VAT, there also actual realisation of the sale proceeds is not relevant for payment of excise duty / VAT and the same is going to be the case with service tax too.

So beware while providing service and issuing invoice. If the service receiver is not going to pay you the bill, the loss is not only limited to the billed amount, but the service tax already paid in this regard would also have to be foregone.