Editorial

The GST Council has released the bucketing of Goods and Services in the five tax brackets. The Council has also released the list of services which would fall under the reverse charge mechanism. This shows that the Council and the Government is working towards implementation of GST from 1st July 2017.

I hope you find the contents of this newsletter useful. We would be happy to receive your comments/suggestions on this initiative and the contents of this newsletter. You may e-mail your views at info@scvasudeva.com.

Happy Reading!

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Important Definitions under the Revised Model GST Law

Some of the important definitions covered under this issue are as follows:

1. Recipient
2. Supplier
3. Removal
4. Turnover in State or Turnover in Union Territory
5. Voucher

The above definitions are explained below:

1. ***Recipient:*** Definition of Recipient has been given in section 2(93) of The Central Goods and Services Tax Act 2017 (hereinafter known as the Act). "Recipient" of supply of goods or services or both, means—
    a. where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
    b. where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
    c. where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

    Recipient shall be the person who is liable to pay consideration or is receiving the goods or services. The term recipient is important where the tax is paid on reverse charge basis. In this scenario, the recipient would be liable to issue payment voucher while making payment to the supplier and a tax invoice where supplier is unregistered under the Act.

2. ***Supplier:*** Definition of Supplier has been given in section 2(105) of the Act. "Supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

   Supplier not only includes the person supplying the goods or services but also includes an agent/broker acting on behalf of the supplier. The definition of supplier includes agents to ensure that invoices raised by the agent on behalf of the supplier for effecting sales on his behalf qualify as valid invoices, as if they were issued by the supplier himself.

3. ***Removal:*** Definition of Removal has been given in section 2(96) of the Act. "Removal'' in relation to goods, means—
   a. despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
   b. collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

   The term "Removal" is relevant only in case of supply of goods. The importance of this term arises for raising Invoice, which in turn is an essential element to determine Time of Supply. The law clearly specifies that the removal need not be effected by the supplier himself, but could also be the result of collection of goods by the recipient.

4. ***Turnover in State or Turnover in Union Territory:*** Definition of Turnover in State or Turnover in Union Territory has been given in section 2(112) of the Act. "Turnover in State" or "Turnover in Union Territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes Central tax, State tax, Union territory tax, integrated tax and cess.

   The definition is wide enough to include all supplies by a person within the state or inter-state. It only excludes supplies which have been received on reverse charge basis for eg. legal services received from an advocate.

5. ***Voucher:*** Definition of Voucher has been given in section 2(118) of the Act. "Voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their

potential suppliers are either indicated on the instrument itself or in related documentation including the terms and conditions of use of such instrument.

The term voucher under GST, would mean an instrument that can be used in place of money (or other consideration). It would be an asset for the recipient as the recipient would be able to purchase against the voucher. For eg: Coupons, promo-codes etc.

Input Tax Credit under Goods and Services Tax Law

Tax cascading is one of the major flaws of the current indirect tax regime. It increases the cost of production and puts Indian supplier at a competitive disadvantage in the national and international markets.

Introduction of CENVAT has removed the cascading effect of "Tax on Tax" to a major extent by providing a mechanism of set off for tax paid on inputs and services up to the stage of manufacturing/production, however, certain flaws under the CENVAT system has not allowed the Indian Indirect tax structure to overcome fully on the issue of "Tax on Tax". The flaw under the current Indirect tax structure is as follows:

- Non availability of credit of Excise duty and Service tax for VAT
- No credit for CST
- No credit for Entry tax or Octroi
- No credit of Basic Customs duty and Custom cess
- No credit of VAT to service providers
- No credit of Swachh Bharat Cess to manufacturers & Service providers
- No credit of Krishi Kalyan Cess to manufacturers & Service Providers

It is expected that GST will overcome the problem of tax cascading through seamless flow of input tax credit mechanism. Under the GST regime, final tax would be paid by the consumer of the Goods and/or Services but there would be seamless input tax credit system in place to ensure that there is no cascading of taxes.

Input tax as per the Central Goods and Services Tax Act 2017(herein after known as the Act) means *"Input tax in relation to a registered person, means the Central tax, State tax, Integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes-*

(a) The integrated goods and services tax charged on import of goods

(b) The tax payable under the provisions of sub-sections (3) and (4) of section 9
(c) The tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act
(d) The tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act
(e) The tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act

but does not include the tax paid under the composition levy"

From a perusal of the above, it would be clear that tax on any input by the taxable person including tax paid by such person under reverse charge shall be eligible for the input tax credit. However, the person who is under the composition levy scheme shall not avail the input tax credit.

It is important to note that the credit of input tax would be available only to registered persons. If a person is not registered under the GST regime, then he would not be eligible to avail the input tax.

The utilization of credit under the GST regime would be as follows:

Input tax credit	***Order of Adjustment against output tax***
CGST	*1. CGST* *2. IGST*
SGST	*1. SGST* *2. IGST*
IGST	*1. IGST* *2. CGST* *3. SGST*

Input-tax credit would not be available for Goods and/ or Services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club etc used primarily for personal use or for consumption of any employee. The input tax credit is not allowed for Goods and/or Services used for personal consumption or for personal consumption of employees. These provisions are similar to the provisions given in Cenvat Credit Rules 2004.

IN THE HIGH COURT OF DELHI AT NEW DELHI
SERTA 31/2016,C.M. APPL. 44560/2016

FUTURE LINK INDIA ……Petitioner

Vs

THE COMMISSIONER OF CENTRAL EXCISE, DELHI……Respondent

Background:

Future Link India (hereinafter known as the assesse), providing Business auxiliary services (BAS) was liable to deposit service tax w.e.f. September 10, 2004, however, it obtained registration and started filing returns in 2009. Accordingly, show cause notice was issued for the years for which returns were not filed. Assessee admitted its liability and deposited Rs. 28 lakhs (approx.) out of the demand of Rs. 44.04 lakhs (approx.) Assessee contested the liability u/s 78 which enjoined a mandatory penalty of 100% of the tax demanded. It however, did not succeed on this score as both the Adjudicating Authority and CESTAT upheld the penalty. Being aggrieved, assessee filed appeal before the Hon'ble High Court.

Issue:

The following issue arose in the case:

- Did the CESTAT and the authorities fall into error in holding that penalty under section 78 of the Finance Act, 1994(hereinafter known as the Act) imposed was justified and appropriate?

Decision:

The Hon'ble Court referred to the case of "Commissioner of Central Excise and Customs, Daman vs. R.A. Shaikh Paper Mills Pvt. Ltd. [2010 (259) ELT 53 (Guj)] wherein it was held that if the assessee did not dispute his liability, the milder penalty prescribed by the provisions of Section 78 of the Act would be imposed by High Court, since the appellate proceedings were an extension of the original proceedings".

As regards assessee's contention that there was no suppression of material facts, or fraud or collusion justifying invocation of extended period of 5 years in present case, the Hon'ble Court referring to the case of Uniworth Textiles limited v. Commissioner of Central Excise, Raipur 2013(288) ELT 161(SC), noted that the said judgment elaborately discussed what constitutes "fraud" or "willful suppression" or "misrepresentation" in regard to short payment or non-payment of duty. The Hon'ble Court observed that assessee in present case, had registered itself with the service tax authorities in 2009, i.e. about 3 years before issuance of notice and its defense regarding no knowledge about the inclusion of its business activity in the statute was quite probable. In any event, there was no material pointing to deliberate inaction. The Hon'ble Court stated that, in all the decisions cited by Revenue, the assessees were aware of their liability and they were called to book for not disclosing the true figures or production, unlike in the present case where assessee claimed unawareness before registration in 2009.

"Mr. Sanjeev Narula, learned counsel for the revenue, argued that having regard to the facts, the question of any penalty other than what was imposed in this case does not arise. He points out that under proviso to Section 78 (1), the assessee has limited option of paying up the amount demanded with interest levied, within 30 days resulting in reduction of penalty to 25%. In default of such compliance, the assessee would have to suffer 100% penalty. It was also contended that once the period is over, the authorities are powerless to waive the amount or reduce it; in support of this proposition, reliance was placed on the judgments reported as K.P. Pouches (P) Ltd. vs. Union of India (UOI) 2008 (238) ELT 31 (Del); ruling where it had directed all the Adjudicating Officers to expressly state in their orders, the option available u/s 11AC of Central Excise Act (which is pari materia Section 78). The Hon'ble Court also noted that the period of 90 days was required to be given in the order in respect of service tax as stated under fourth proviso of Section 78(1). In the present case, the Adjudicating Authority did not grant such time to assessee although the amount demanded (Rs. 44 lakhs) fell within the limit indicated by proviso to Section 78(1)".

Though non-compliance of Section 78 did not per se invalidate the penalty, since no opportunity was granted to assessee and it had deposited substantial amount at the stage of adjudication without contesting the liability, the Hon'ble Court opined that limited relief in terms of proviso should be extended. Accordingly, it granted assessee an option to deposit the balance amount of service tax together with accumulated interest and penalty of 25% of the entire tax due, within the period indicated in the third proviso of Section 78(1) i.e within 30 days. Accordingly, the High Court modified CESTAT's order and disposed of assessee's appeal.

IMPACT ON THE TELECOMMUNICATION SECTOR

From the conventional belief of being a communication service provider to providing multiple streams of value added services, the telecommunications sector (hereinafter known as the Telecom Sector) has become one of India's core economic drivers. The sector is also among the top five employment generators in India.

There are three segments in which the sector currently operates:

(1) Telecom service providers—it involves base stations, receivers, etc. which are positioned to create the network enabling transmission of data/voice;

(2) Passive infrastructure service providers providing base transceiver station (BTS) cabins, battery banks, etc. used to support the (active infrastructure) telecom service providers; and

(3) Telecom equipment manufacturers

Tax trigger on the telecom sector commenced since the inception of the service tax, way back in 1994. While the telecom sector has been a major contributor in indirect tax revenue generation for the government, it is facing various issues on the indirect tax front. One of the major concerns for telecom service providers is the denial of Cenvat credit on telecom towers. This has resulted in tax cascading, thereby rendering the service uncompetitive. The issue is whether goods constituting the telecom tower qualify as "capital goods" or "input". While capital goods and inputs have been exhaustively defined under the current provisions of Cenvat Credit Rules, 2004, there is no specific mention on admissibility of Cenvat credit on telecom towers being plant and machinery used for the purpose of business. This has been a subject matter of litigation for long. This is significantly impacting the entire telecom industry as it increases the cost of passive infrastructure. Under GST Law, there will not be any bar in availing credit as telecommunication towers are specifically excluded from the definition of Plant and Machinery.

Currently, most of the Telecom Sectors have obtained centralised Service tax registration certificate and undertake centralised compliances. However, under the GST Law, separate registration would be required in each State from where the services are rendered. Accordingly, the Compliance and the cost for the same, would increase.

Under the existing law, where both the Telecom Service provider and service receiver are in India, Place of provision would be that of service receiver. Under the GST Law, Place of Supply would be determined in the following manner:

1. For fixed line, leased circuits, internet leased circuit, cable or dish antenna, the place of supply is where the line, circuit or cable connection is installed for receipt of services;
2. For post-paid mobile or internet services, the place of supply is the billing address of the subscriber;
3. For prepaid mobile or internet services, the place of supply is the location where the pre-payment is received, or the voucher sold. However, if the recharge is made through internet banking/ electronic mode of payment, the place of supply is the location of the service recipient on the record of the supplier.

The GST Council has recently finalised the categorisation of Goods and Services and Telecom Sector has been kept in the 18% category. Though there is an increase of 3% in the rate of tax but with the availment of credit on towers being now allowed to the telecom sector whether the tariff will reduce or not is an issue which only time will tell.