



CMA Ashok Bhagwandas Nawal
Council Member

TAXABILITY ON RECEIPT OF SERVICES COVERED UNDER REVERSE CHARGE

There is lot of confusion for taxability of receipt of services covered under reverse charge prior 30th June 2017 but accounted after 30th June 2017. In such cases, whether Service tax is liable to be paid and taken the credit under the Transitional Provisions and what will be the situation when such invoices are accounted after 30 days of appointed day i.e. 30th July 2017 and paid subsequently.

We have tried to elaborate the situation and arrived at the conclusion as given below:

1. As per Section 66B of the Finance Act, 1994, "There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent on the value of all services, other than those services specified in the negative list, **provided or agreed to be provided** in the taxable territory by one person to another **and collected in such manner** as may be prescribed".
2. The collection and determination of rate of tax and value will be in accordance with Section 67A of the Finance Act, 1994 read with The Point of Taxation Rules, 2011.

2.1 Section 67A states:

Quote

1. *The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.*
2. *The time or the point in time with respect to the rate of service tax shall be such as may be prescribed.*

Explanation - For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed.

Unquote

- 2.2 The Point of Taxation Rules, 2011 have been notified in accordance with powers conferred under sub-section 2 of Section 67A and clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994.

2.3 Section 94 of the Finance Act provides the power to make rules.

Quote

- 1) *The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.*
- 2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -*
 - a) *collection and recovery of service tax under sections 66 and 68;*
 - aa) *determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under section 67;*
 - b) *the time and manner and the form in which application for registration shall be made under sub-sections (1) and (2) of section 69*
 - c) *the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70*
 - cc) *the manner of provisional attachment of property under sub-section (1) of section 73C;*
 - ccc) *publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;*
 - d) *the form in which appeal under section 85 or under sub-section of section 86 may be filed and the*

- manner in which they may be verified;*
- e) *the manner in which the memorandum of cross objections under sub-section (4) of section 86 may be verified;*
 - ee) *[****]*
 - eee) *the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;]*
 - eeee) *the manner of recovery of any amount due to the Central Government under section 87;*
 - f) *provisions for determining export of taxable services;*
 - g) *grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;*
 - h) *rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;*
 - hh) *rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;*
 - hhh) *the date for determination of rate of service tax and the place of provision of taxable service under section 66C;*
 - i) *provide for the amount to be paid for compounding and the manner of compounding of offences;*
 - j) *provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in*

Chapter V of the Central Excise Act, 1944 (1 of 1944) as made applicable to service tax vide section 83;

- k) imposition, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified;**
- l) make provisions for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on provider of taxable service or exporter, for dealing with evasion of tax or misuse of CENVAT credit;**
- m) authorization of the Central Board of Excise and Customs or [Principal Chief Commissioners of Central Excise and Chief Commissioners of Central Excise] to issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act;**
- n) any other matter which by this Chapter is to be or may be prescribed.**

Unquote

2.4 Section 94 of the Finance Act provides the power to make rules.

Section 67A subsection 2	The time or the point in time with respect to the rate of service tax shall be such as may be prescribed
Section 94(2)(a)	Collection and recovery of service tax under sections 66 and 68
Section 94(2)(hhh)	Date for determination of rate of service tax and the place of provision of taxable service under section 66C

2.5 As per the said Rules, “point of taxation” means the point in time **when a service shall be deemed to** have been provided. Accordingly, the service will be deemed to be provided on the date determined as per point of taxation and service tax will be levied at point of taxation determined in accordance with Point of Taxation Rules.

3. Issue then arises as to whether service tax can be levied if the point of taxation is on or after the appointed date (GST appointed date). We will therefore have to go through Section 174 of the CGST Act, 2017 w.r.t. Repeal and Saving.

3.1 Section 174 has been drafted in line with Section 6 of the General Clauses Act, 1897.

Quote

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, except in respect of goods included in the entry 84 of the Union List of the seventh Schedule to the Constitution, and the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as such amendment or amended Act, as the case may be) to the extent mentioned in the sub-section (1) shall not -

- a) revive anything not in force or existing at the time of such amendment or repeal; or**
- b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered there under; or**

c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts; or

d) affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

e) affect any investigation, inquiry, assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, assessment proceedings, adjudication and other legal proceedings or recovery of arrears remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

f) affect any proceedings including that relating to an appeal, revision, review or reference, instituted before on or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect

the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

3.2 As specified in clause 2(c) of the above section, the obligation or liability acquired, accrued or incurred under the amended Act / repealed Acts, will not be affected. Therefore, in cases where the point of taxation under Service Tax falls on or after appointed date, the service tax on the same will continue to be discharged.

4. It is also pertinent to note that as per Section 142 (11) (b) ***“Notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;”***

In the case being discussed, service tax was leviable on the services rendered in accordance with point of taxation. As such there is no requirement to pay GST once the liability of service tax was levied on the services under the Finance Act, 1994.

5. Eligibility of Credit

5.1 Since tax levied is service tax, it is necessary to check whether credit of the same is allowed.

5.2 Section 140(5) provides “A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or taxpaying document of the same was recorded in the books of

account of such person within a period of thirty days from the appointed day”.

Going by the wordings of this section, it appears that credit will be available only in situations where taxes are paid prior to appointed date but services are received on or after 1st July, 2017. Therefore, if services received are prior to 1st July, 2017, credit will be available under this section subject to litigation.

6. To Conclude:

- When such invoices are received after 1st July, accounted & paid before 30th July

2017, then Service Tax will be payable and it has to be reported in TRAN-1 Form to avail the credit.

- When such invoices are received after 1st July, accounted & paid after 30th July 2017, then Service Tax will be payable as and when it becomes due and in absence of specific provision in the CGST Act 2017 and restrictive provision of accounting & payment of such invoices prior to 30th July 2017, no credit will be available in GST Regime. It has to be further noted that, last date of Filing the TRAN-1 Form is 28th Sept 2017.

Sr. No	Date of issue of invoice	Provision of Services	Date of payment of Tax	Applicability of service Tax	Cenvat credit carried in Tran -1	Remark
1	After 30 th June	Before 30 th June	Month of July	Yes	Yes	
2	After 30 th June	Before 30 th June	Not yet done	Yes	Yes	ITC can be availed subject to obtaining extension of 30 days from Commissioner and accounting before 30 th August 2017.
4	Before 30 th June	After 30 th June	Month of July	Yes	Yes	
5	Before 30 th June	After 30 th June	Not yet done	Yes	Yes	ITC can be availed subject to obtaining extension of 30 days from Commissioner and accounting before 30 th August 2017.
6	Before 30 th June	Before 30 th June	Month of July	Yes	Yes	
7	Before 30 th June	Before 30 th June	Not yet done	Yes	Yes	ITC can be availed subject to obtaining extension of 30 days from Commissioner and accounting before 30 th August 2017.

Above conclusion will be valid only for the invoice **accounted prior to 30th July 2017 in the books of accounts OR** necessary application for extension to be made and permission needs to be obtained from Commissioner of Central Tax on or before 30th August 2017. Otherwise, the service tax will be required to be paid and it will become the cost, since ITC will not be available.

There is no clarity on reporting of such payment of Service Tax, either in ST-3 or otherwise after filing ST-3 for the period April - June 2017, since there is no requirement of filing ST-3 after July 2017.