

Adjudication Procedures under Service Tax

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Overview of the Presentation

- This Presentation mainly discuss
 - What is the Assessment & Adjudication Process
 - How to handle the Notices From the Service Tax Department
 - How to prepare reply of the SCN
 - Some Practical Experience
- This Presentation do not discuss the issue of
 - taxability or Exemption of the Services.
 - Admissibility of the Cenvat Credit etc.

Type of Assessment under Service Tax

- Self Assessment (Section 70)
- Best Judgment Assessment (Section 72)
- Adjudication of Service Tax not levied or paid or short levied or short paid or erroneously refunded (Section-73)

Self Assessment by Filing of Service Tax Return (STR) Sec-70

The First Step

- Every Person liable to pay Service Tax is required to file STR on the basis of Self assessment of the assessee.
- STR is to be filed Half yearly by within 25 days from the end of Half year. (25th April and 25th October every year)
- STR Form- ST-3
- Late Filing fees for late filing of STR upto 20000/- per STR.
- Assessee should pay the due service tax before filing of STR
- Can a STR be filed without payment of Service Tax ?

Best Judgment Assessment (Sec-72)

May be High Pitch Assessment

If any person liable to pay Service Tax

- fails to furnish the service tax return under Section 70;
- files the return but fails to assess service tax as per the provisions of Finance Act, 1994 or Rules made there under.

(For making Best judgment Assessment, CEO may ask the assessee to produce such accounts, documents or other documents as he thinks necessary.)

Best Judgment Assessment (Sec-72)

May be high Pitch Assessment

- After taking into account all the relevant material which is either available or which CEO has gathered, he shall pass Best judgment Assessment order in writing,
- to make the assessment of value of taxable services to the best of his judgment and determine the amount payable or refundable to the assessee. after giving an opportunity of being heard to assessee.

Adjudication of Service Tax (Sec-73)

- The Recovery of ST can be made by issuing a Show Cause Notice (SCN) by the Central Excise Officer in the following circumstances—
 - ❖ ST has not been levied or paid
 - ❖ ST has been short levied or short paid
 - ❖ Any sum erroneously refunded
- By Serving of a Show Cause Notice (SCN)
 - ❖ Within 18 months from the relevant date
 - OR
 - ❖ Within 5 Years from the end of relevant date

Recovery of Service Tax (Sec-73)

- Relevant Date :
 - In case of STR filed - the date of return filing
 - If no STR filed - the Last date on which return is to be filed
 - If any sum erroneously refunded - the date of Refund
 - In other cases - Date on which service tax is due to be paid
- Where time limit of issue of SCN will increase from 18 months to 5 years—
 - If ST has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of
 - Fraud or
 - Collusion or
 - Wilful mis-statement or
 - Suppression of facts or
 - Contravention of any of the provision with the intent to evade payment of Service tax.

SHOW CAUSE NOTICE (SCN)

The First Step towards litigation

- A detailed Notice disclosing clearly
 - The facts of the case
 - The facts about the assessee
 - The Relevant Sections and Rules and other Law
 - The reply of the Pre SCN inquiry notices submitted by the assessee
 - The Charges to be framed against the assessee
 - **The amount of the tax to be demanded from the assessee**
 - Containing copies of all the correspondence done by the department and the reply submitted by the assessee
 - Giving final opportunity to the assessee to disclose why the amount mentioned in the SCN should not be demanded from the assessee.

SHOW CAUSE NOTICE (SCN)

The First Step towards litigation

- Source of Information with the Department to issue SCN
 - Through Enquiry on the basis of STR filed by the assessee
 - Through Enquiry from the Detailed Manual Scrutiny of STR (Circular No- 185/4/2015 dated 30-6-2015)
 - Through Audit Department
 - Through Anti Evasion Department

SHOW CAUSE NOTICE (SCN)

The First Step towards litigation

- Some Major Points of Disputes covered in SCN
 - Exemption claimed by assessee but taxable as per department
 - Assessee claiming benefit of Export of Services but not allowed
 - Import of Services but Reverse Charge not paid
 - Reverse Charge applicable on other services but not paid by the assessee
 - Cenvat Credit taken on unregistered Premises
 - Cenvat Credit wrongly taken and utilised
 - Assessee do not pay the service tax due to fraud etc hence to be covered under extended period of 5 years
 - Why Penalty and Interest should not be imposed.

SHOW CAUSE NOTICE (SCN)

The First Step towards litigation

- Prerequisite for Preparing reply of a SCN
 - Whether the assessee is your regular client or he is a referral case from some other professional
 - Try to understand the case history in detail and what is exactly nature of the services provided by the assessee.
 - Read at least twice the full SCN along with the complete annexure.
 - Prepare a gist of the important points arising from the SCN
 - Prepare a Event Chart
 - Check whether all the figures and facts mentioned in the SCN is correct according to the relevant facts
 - Cross verify the figures in the SCN from the Balance Sheet and STR filed by the assessee
 - Check whether the rate of service tax has been correctly applied

SHOW CAUSE NOTICE (SCN)

The First Step towards litigation

- How to Prepare a Reply to the SCN
 - It is a detailed reply showing clearly the version of the department and of the assessee and the success or failure of the case depends mainly on it.
 - Reply should identify the disputed Issues alongwith the amount involved, which is to be replied.
 - Reply should be issue specific .
 - Quote the relevant case laws, Circulars, Notifications at the relevant place.
 - The Majority of the SCN try to cover the time barred period, hence this issue must be replied in a perfect manner.
 - Mention specifically that you want a personal hearing.
 - Attach the relevant documents on which you rely while replying the SCN.
 - Prepare a Index showing Page Number s.

Personal Hearing Before the Adjudicating Authority (AA)

- First Check Your power of Attorney (Duly Stamped)
- Be on time at the AA office
- Read the reply at least once prior to appearing before the AA.
- The AA has very limited time, hence you should know what you exactly want to say.
- You should know where is the relevant matter has been written in the reply and where is the relevant evidence has been given.

Time Limit for Adjudication of SCN

Sec-73(4B)

- Earlier There was no time Limit
- W.e.f. 6-8-2014

With 6 month from the date of Notice if SCN for Normal Period of 18 Months

With 1 year from the date of Notice if SCN for Extended Period of 5 Years.

- The above time limit of adjudication is subject to the condition “Where *it is possible to do so*”.
- It means the above time limit is not Mandatory but directory in Nature

The Service Tax Department Structure

Source of Information for issuing SCN

The Investigation against assessee is done by the following

- 1- Range
- 2- Audit Department
- 3- Anti Evasion Wing
- 4- Director General of Central Excise Intelligence (DGCEI)
- 5- CAG

Monetary Limit for Adjudication by AA

(Cir. No-130/12/2010 dated 20.9.2010)

S No.	Designation of the Officer	Amount of Service Tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 73
(1)	Superintendent	Upto Rupees One lakh)
(2)	ACor DC	Upto Rs.Five lakhs
(3)	JC	Above Rs.Five lakhs but not exceeding Rs. fifty lakhs
(4)	Additional Commissioner	Above Rs.Twenty lakhs but not exceeding Rs. fifty lakhs
(5)	Commissioner of Central Excise	Without limit.

- The Superintendent can't adjudicate the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.
- The AC / DC will not adjudicate where the Superintendent is empowered.

SERVICE TAX AUDIT

- Empowered vide Rule 5A(2) of the STR (amended w.e.f 5-12-14)
- Can be done by
 - Audit Party Deputed by Commissioner
 - CAG
 - Chartered Accountant or Cost Accountant nominated u/s 72A
- Just as the Scrutiny Assessment in Income Tax
- Done By the Service Tax Officers at the Premises of the assessee
- Pre intimated by the Department
- A Detailed Questionnaire is given by the department
- Done within a defined time frame work (Generally 10 days)

SERVICE TAX AUDIT

- The Purpose of Audit is to ascertain
 - To ascertain the correctness of claim of CENVAT credit, If any;
 - To ascertain the correct valuation of taxable service
 - To ascertain whether reimbursement claimed in Invoices/Bill/Challans have actually been incurred and eligible for deduction for taxable value of service;
 - To ascertain whether deduction claimed for value of goods and materials sold during the course of provision is supported by proper evidence.
 - Whether provision of reverse charge have been complied with?

SERVICE TAX AUDIT

Table showing the Audit frequency Norms for different category of Tax payers (**Service Tax Audit Manual 2010**)

S NO.	Quantum of annual Service Tax payment (in cash + CENVAT credit)	Frequency of Audit
1	Taxpayers paying more than Rs 3 Crore	Every year
2	Taxpayers paying between Rs 1 to 3 Crore	Once in two years
3	Taxpayers paying between Rs 25 lakh to 1 crore	Once in five years
4	Taxpayers paying below Rs 25 lakh	2% of the total number every year

Detailed Manual Scrutiny of Service Tax Return

(Cir No- 185/4/2015 dated 30-06-2015)

- Two Types of scrutiny of STR
 - Preliminary Scrutiny
 - through Online (ACES)
 - Covering all the returns
 - purpose is to check completeness of information, Arithmetic correctness etc
 - Detailed Manual Scrutiny
 - to be done by range offices
 - covering selected returns based on risk parameters
 - Purpose is to ensure correctness of the assessment made by the assessee.

Detailed Manual Scrutiny of Service Tax Return

(Cir No- 185/4/2015 dated 30-06-2015)

- **Highlights of the Scheme**

- The proper officer must rely mainly on assessment related documents like agreements/contracts and invoices.
- Detailed financial records should not be called for in a routine manner.
- The focus of detailed manual scrutiny of the returns would be on the returns of those assesseees which are not being audited.
- The detailed return scrutiny would be conducted in respect of such assesseees whose total tax paid (Cash + CENVAT) for the FY 2014-15 is below Rs.50 lakhs.
- Each Commissionerate has to select equal number of assesseees for carrying out returns' scrutiny from each of the these three total tax paid bands (Cash+CENVAT) viz., Rs.0 to Rs.10 lakhs, Rs.10-25 lakhs and Rs.25-50 lakhs for the financial year 2014-15.

Detailed Manual Scrutiny of Service Tax Return

(Cir No- 185/4/2015 dated 30-06-2015)

- **Highlights of the Scheme**

- The assessee who have been selected for audit or have been audited recently (in the past three years) should not be taken up for detailed scrutiny.
- However, the Chief Commissioner, may direct detailed manual scrutiny of an assessee's return who has paid service tax (Cash + CENVAT) more than Rs.50 lakhs in certain specific cases.
- **In no event should an assessee be subjected to both audit and detailed manual scrutiny.**
- Before return scrutiny is initiated, the assessee must be given prior intimation of at least fifteen days and the purpose of the exercise must be spelt out in an Intimation Letter in a format given as Annexure I.
- Once an assessee's returns are taken up for detailed scrutiny, the Range should compile the Assessee Master Information to facilitate trend analysis in a format given as Annexure II.
- Since this information is based on the returns, it can be obtained from the returns filed in ACES without making any reference to the assessee.

Detailed Manual Scrutiny of Service Tax Return

(Cir No- 185/4/2015 dated 30-06-2015)

- **Highlights of the Scheme**

- Returns scrutiny must be done for a complete financial year by looking at two half-yearly returns in conjunction.
- To begin with, the returns for the financial year 2013-2014 should be taken up for detailed Scrutiny.
- The validation exercise would require reconciling information furnished in the ST-3 return with ITR Form Nos. 4, 5, 6 and 26AS and any third party information made available.
- In case any additional details are required, the same may be obtained from the assessee through requisition rather than through a visit. Calling of such additional documents must be done with the approval of the jurisdictional DC/AC so as to obviate the complaint of administrative intrusion.
- The scrutiny process of an assessee should be completed in a period not exceeding three months.

Detailed Manual Scrutiny of Service Tax Return

(Cir No- 185/4/2015 dated 30-06-2015)

● Highlights of the Scheme

- In cases where detailed scrutiny of returns results in detection of defaults in service tax payment and it appears that the proviso to section 73(1) of the Finance Act, 1994 is invocable, the ST-3 returns of the past periods should also be verified and the results of such verification should be recorded.
- Even after the introduction of GST, it may be appreciated that the basic principles of scrutiny of returns and reconciliation of records would remain the same.

Interest on Late Payment of Service Tax (Sec-75)

S. No.	Period of Delay	Rate of simple interest
1.	Up to six months	18 %.
2.	More than six months and up to one year	18 % for the first six months of delay and 24 % for the delay beyond 6months.
3.	More than one year	18 % for the first six months of delay; 24% for the period beyond six months up to one year and 30% for any delay beyond one year.

Penalty u/s 76

Failure to make payment of service tax within time (w.e.f-14-5-15)

- Imposable in case of Service Tax not paid due to Fraud etc.
- Penalty not to exceed ten percent of service tax amount involved
- **No penalty** if Service tax and interest is paid within 30 days of issuance of SCN under Section 73(1) & proceeding in respect of such service tax and interest shall be deemed to have been concluded;
- a) **Reduced penalty equal to 25%** of the penalty imposed by the CEO by way of an Order shall be payable if the Service tax, interest and reduced penalty is paid within 30 days of the receipt of such order.

Penalty u/s 78

Failure for failure to pay service tax for reason of Fraud etc. (w.e.f-14-5-15)

- Similar to Penalty u/s 271(1)(c) of the I Tax Act
- Penalty shall be 100% of Service Tax amount involved in such cases.
- **Reduced penalty** equal to **15% of the Service Tax** shall be payable if Service Tax, interest and reduced penalty is paid within 30 days of **service of SCN** under proviso of Section 73(1) and proceeding in respect of such service tax , interest and penalty shall be deemed to be concluded;
- **Reduced penalty** equal to 25% of the Service Tax amount, shall be payable if the Service Tax, interest and reduced penalty is paid within 30 days of receipt of **adjudicating order**

Penalty u/s 76 & 78

Whether Both the Penalty can be levied simultaneously

- Upto 14-5-2015, Not Possible due to Proviso in Section 78
- W.e.f. 14-5-2015, Can be Levied simultaneously, as the proviso has been deleted from Section 78

Offences and Prosecution

- Nature of Offences—
- (a) knowingly evades the payment of service tax under this chapter; or
- (b) avails and utilise credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
- (c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made there under or supplies false information; or
- (d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

Offences and Prosecution

- Type of Punishment

(i) in the case of an offence specified in clause (a), (b) or (c) where the amount exceeds fifty lakhs rupees, with **imprisonment** for a term which may extend to **three years** but not less than six months

(ii) in the case of the offence specified in clause (d), where the amount exceeds fifty lakhs rupees, with **imprisonment** for a term which may extend to **seven years but not less than six months**

(iii) in the case of any other offences, with imprisonment for a term, which may extend to one year.

Note : The above amount of Rs50 Lac has been amended to Rs.1 Crore w.e.f. 23-10-15 vide Cir No-1010/17/2015-CX dated 23-10-15

The offence at Point no-ii above is a cognizable offence

Offences and Prosecution

Power to arrest

- If the [Principal Commissioner of Central Excise or] Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Central Excise, to arrest such person
- Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.
- In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).
- All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrests.]



Thank You