

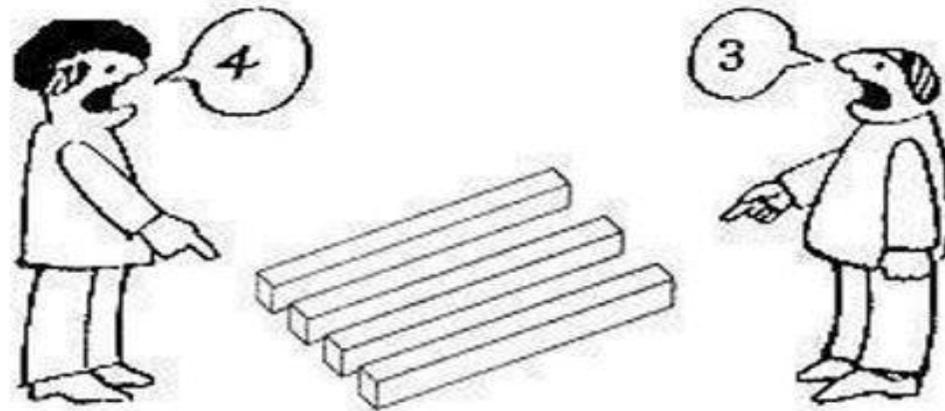
JANAKPURI STUDY CIRCLE

Handling litigation- Service Tax

-By CA Ashish Chaudhary
Partner-Hiregange & Associates,
Chartered Accountants

19 December, 2015

How many rods are there???



Coverage

- ✓ Litigation
- ✓ Audit
- ✓ Scrutiny
- ✓ Investigation
- ✓ Adjudication – Section 73
- ✓ Issuance of SCN
- ✓ Interest
- ✓ Penalty

Litigation

- ✓ ST is self assessment.
- ✓ Onus on assessee to calculate & pay tax and file periodical Returns.
- ✓ With increasing coverage and widening of assessee base, the dispute between assessee and department also increasing.
- ✓ Threat to business

Litigation

- ✓ For assesses in tax disputes, nothing to gain and only to lose.
- ✓ “in litigation the winner assessee loses and the loser assessee dies”.
- ✓ Efforts should be made to avoid/minimize the dispute with department.

Audit

Audit

Definition

“Audit means an examination of accounts by an authorized person”

Objective of Dept/revenue audit is to measure level of compliance by taxpayer with provisions of FA 1994 and rules framed there under.

Audit by following:

- Department
- CA (Special Audit)
- C&AG

Audit by Dept

Rule 5A of STR, 1994

- Empowers an officer authorized by the PCCE/CCE to access any premises registered for carrying out scrutiny, verification and checks to safeguard the interest of revenue.
- Every assessee, on demand, shall provide to an Officer/Audit Party authorized by CCE or CAG, to submit records:

New Norms -Circular No. 995/2/2015-CX

- ✓ Earlier Audit norms- based on quantum of tax paid
- ✓ Risk parameters not considered
- ✓ New audit norms issued effective 1.7.2015
- ✓ selection criteria based on duty payment done away
- ✓ Assesseees to be selected based on risk scores identified as per risk parameters
- ✓ Few random selection also
- ✓ Audit schedule to be finalised by 31st May for audit to be done between 1st July to 30th June of coming year
- ✓ Staff deputed based on large, medium and small units- risk parameters

Audit by department- new norms

- ✓ Separate, full fledged audit wing constituted
- ✓ Detailed training of audit staff
- ✓ Auditors now more equipped
- ✓ Audit wing to issue SCN.
- ✓ Adjudication by executive wing/range
- ✓ Coordinated audit: Single PAN, single audit for both
excise & ST

Dispute Avoidance- Pre Audit

- Reply to the dept letter in time (many assessee would not give much importance to this)
- Pay Taxes with interest if found liable –Avoid low hanging fruits during audit

Dispute Avoidance- During Audit

- Submission of complete information in the assessee profile – reduction of depth and frequency of audits
- Replying all the queries to the audit team in writing
- Avoid long conversation – Ego problem – Explain in brief & submit in writing – Mention as view as per our consultant – Show opinions if taken

Dispute Avoidance- After Audit

- Receipt of audit note (many assessee would not ask for the same)
- Reply to the audit note in depth and in time
- Pay Taxes with interest – if audit observations genuine
- ✓ Other points
 - Submit case laws and legal understanding to the audit team

Dispute Avoidance- After Audit

- Expert opinion / confirmation from senior for reversing / paying duty during audits
- Adjustment of available credits, credits missed out in relevant period
- Option of pmt. under protest

Scrutiny of ST-3 Returns

Introduction

- ✓ Self assessment introduced in Service Tax in 2001
- ✓ Scrutiny norms introduced in 2007
- ✓ Revised in 2009 where detailed norms prescribed
- ✓ Became outdated with changed law
- ✓ New norms issued - effective August 2015
- ✓ Whether self assessment really exist?

Scrutiny Norms

- ✓ Introduced vide circular no. 185/4/2015-TS dated 30th June, 2015. Superseding earlier circular 113/07/2009
- ✓ Scrutiny two types:
 - Preliminary scrutiny: ensuring timely information, mathematic accuracy, completeness. Checked automatically by system
 - Detailed manual scrutiny: Assessment made correct?
- ✓ Separate Return scrutiny cell created - Coms HQ.
- ✓ Target Assessee: Not subject to audit (Number large)

Scrutiny Norms

- ✓ Threshold for selection: equal number of assessees from-
 - Rs. 0 to 10 lacs
 - Rs. 10 lacs to 25 lacs
 - Rs. 25 lacs to 50 lacs

} (CASH + CENVAT in 14-15)
- ✓ To be selected based on risk parameters and risk tools:
already developed
- ✓ If assessee audited in last three years, no scrutiny.
- ✓ Scrutiny to be done by jurisdictional superintendent/
inspectors

Assesseees likely to be selected for scrutiny

- ✓ Registered but not filing of return-reason-exempted
- ✓ Filing for few categories but not for others
- ✓ Filing under wrong categories
- ✓ Delay in filing of return
- ✓ Not filing complete details
- ✓ Providing exempted/negative/abatement service & not disclosing in return
- ✓ Delay in filing of return but late fee not paid
- ✓ Non payment of tax

Assessees likely to be selected for scrutiny

- ✓ Delay in payment: paid without interest
- ✓ Frequent instances of interest payment
- ✓ Challan number shown in return not tallying/incorrect amt
- ✓ Nil returns though having transactions
- ✓ Frequent fluctuation in ratio of payment thru cash/cenvat
- ✓ Difference in income reported in ITR/26AS and ST-3
- ✓ Difference in closing balance of CENVAT Credit of previous to ST-3 return op bal for the current period

Enquiry & Investigation/ Search & Seizure

Section 83 r.w.14 CX – Enquiry/Investigation

- CEO empowered by CG, has power to summon any person whose attendance is necessary either to give evidence or to produce documents or any other thing in any inquiry.
- Person summoned bound to attend either in person or by an authorized agent and bound to state truth in respect of subject being examined or make statements and produce such documents.

Sec. 14.....

- Every inquiry deemed to be a “judicial proceeding” within the meaning of IPC.
- In terms of Notification No. 38/2001-CE (N.T) dated 26.06.2001, as amended issued under Rule 3 of CER, CEO includes DGCEI, DG (Vigilance), DRI, etc.

Section 82 - Power to search premises

- If JCCE has reason to believe that any documents or books which in his opinion will be useful for are secreted in any place, he may authorize any Superintendent to search for and seize or may himself search and seizure, such documents or books or things.
- The provisions of the CCP, 1973 relating to search, shall apply to searches under this section.

Show Cause Notice

Adjudication

- ✓ Section 73 of Finance Act, 1994 empowers the Central excise officer to issue SCN.
- ✓ (1) Recovery of service tax not levied or not paid or short-levied or short-paid or erroneously refunded. SCN may be issued within 18 months from the relevant date.

Section 73 Conti.....

Where ST was not levied or paid or short levied or paid or erroneously refunded by reason of fraud; or collusion; or wilful mis-statement; or suppression of facts; or contravention of any of the provisions with intent to evade payment of ST, *SCN can be issued for period of 5 years.*

Cosmic Dye Chemicals Vs. CCEX, Bombay

1994 (75) ELT 721 (SC)

- Fraud and collusion: As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words
- Misstatement or suppression: they are closely qualified by the word 'wilful' - which means with intent to evade duty
- Contravention of any provisions: are qualified by immediately following words 'with intend to evade payment of duty'

Section 73 – relevant date

"relevant date" means, -

- (i) In case of taxable service in respect of which ST not levied or paid or been short-levied or short-paid –
- where periodical return, showing particulars of ST filed by an assessee, date of filing of return;
 - where no periodical return filed, last date of filing return;
 - in any other case, the date ST is to be paid (date of payment).

Relevant date Contin.....

- in case where ST is provisionally assessed, the date of adjustment of ST after the final assessment;
- in case where any sum, relating to ST, has erroneously refunded, the date of such refund.

Section 73 (1B)

- Service tax payable, self-assessed in the return furnished, but not paid, recovered along with interest thereon in any mode as specified under Sec 87,
- No need of serving notice

Section 73(3)

- Voluntary payment of ST along with interest before service of notice,
- on own ascertainment, or
- as ascertained by the CEO and
- intimate the CEO in writing,
- who on receipt of such information shall not serve any notice for the amount paid.

Interest and Penalties

Interest on Service Tax

- ✓ In cases of short / non payment of ST.
- ✓ W.e.f. 01.10.2014 (Earlier 18%)

Period	Rate of Interest
Upto 6 Months	18%
More than 6 Months to 1 year	18% for first 6 months 24% for period beyond 6 months
More than 1 year	18% for first 6 months 24% for second 6 months 30% for a period beyond 1 year

- ✓ If the value of taxable service is less than 60L, then above rate will be reduced by 3%.
- ✓ Computed from due date till date of payment.

Illustration

Service tax became due on 6th July, 2012

Assessee pays dues on 6th Dec, 2014. Interest to be charged would be as below:

Upto Sept, 30th, 2014	18% simple interest
From 1st Oct, 2014 to 6th Dec 2014	30% since the period of delay is beyond 1 year.

*If SSP, 3% concession on applicable rate of interest will continue to be available.

- Clarification given in Circular Dated 10.07.2014

Interest on Excess Credit

- ✓ Credit taken AND utilized wrongly
- ✓ Concept of deemed utilisation introduced
- ✓ Erroneously refunded
- ✓ Interest as per section 75

Late filing of ST-3 Returns

- ✓ Rule 7C of Service Tax Rules read with section 70
- ✓ Amount of penalty determined based on no. of days of delay.
- ✓ Up to 15 days – Rs.500/-
- ✓ More than 15 days less than 30 days – Rs.1000/-
- ✓ Beyond 30 days – Rs. 1000 plus Rs. 100 per day till date of furnishing of returns – maximum of Rs.20,000/-
- ✓ Better option??

Penalties – section 76 w.e.f 14.05.2015

- Failure to pay tax
- For any reason other than the reason of fraud, collusion etc.
- Penalty – not exceeding 10% of service tax
- If tax and interest paid within 30 days of service of SCN
– No penalty.
- If tax and interest paid within 30 days of receipt of order
– 25% of penalty.
- Whether really exist??

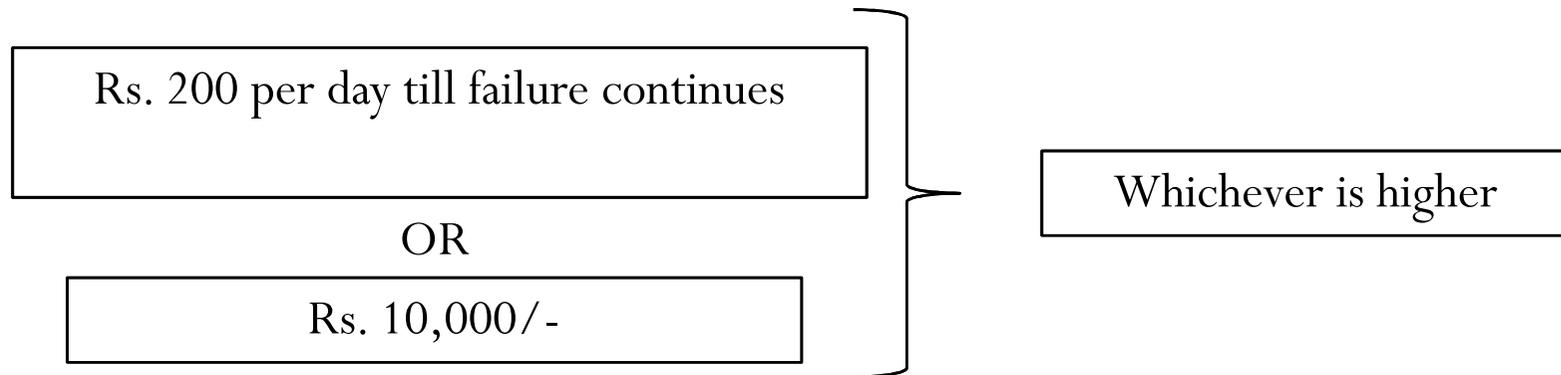
General Penalty –Section 77

- ✓ Upto Rs. 10,000/- in cases of
 - Failure to register
 - Failure to keep, maintain retain books of account & other documents as required
 - Failure to pay tax electronically
 - Issue of incorrect/incomplete invoice
 - Failure to account an invoice.

General Penalty –Section 77

✓ Other Cases:

- Failure to Produce documents called for
- Appear before the Central Excise Officer when summons is issued



- ✓ Where no specific penalty is provided – Rs. 10,000/-

Penalty - fraud, collusion, suppression etc

(Sec 78)

- ✓ In case of fraud/collusion/willful misstatement/suppression of fact/contravention of any of provisions with intent to evade tax.
- ✓ In addition to ST & interest, the following penalty to be paid:
 - Equal to ST After 14.05.2015,
 - If true and complete details of transaction is available in specified records - 50% of ST. (08.04.2011 to 14.05.2015)

Penalty in case of fraud, collusion, suppression etc (Section 78)

- ✓ Where ST and interest is paid within 30 days service of notice – penalty is 15% of ST.- (*Ins No. 137/46/2015-
No SCN*)
- ✓ ST and interest is paid within 30 days of receipt of order – penalty is 25% of ST.
- ✓ No penalty under Sec. 76 when penalty u/s 78.
- ✓ Amount of reduced penalty also to be paid within the 30

Exemption from Penalty - Sec 80

- If failures/defaults leading to imposition of penalties set out under Section 76, 77 & first proviso to 78(1) is due to cause which is 'reasonable cause',
- Then no penalty is imposable under said Section 76, 77 & 78(1).
- This provision is omitted w.e.f 14.05.2015

Penalty for wrong credit

- ✓ Upto amount of wrong credit of ST or 2000/- whichever is higher.
- ✓ Penalty in terms of Section 78.

ANY QUESTIONS???????

ashish@hiregange.com - 8510950400