

CBEC issues clarifications on service tax applicability on services provided by Government or local authority

April 15, 2016

In brief

The Central Board of Excise and Customs (CBEC) has issued Notification Nos. 22-24/2016-Service Tax, 24/2016-Central Excise (NT) and Circular No. 192/02/2016-Service Tax dated 13 April, 2016 dealing with applicability of service tax on services provided by Government or a local authority (collectively referred as 'the Government').

In detail

Effect of the amendments

Key provisions of the amendments are as under:

- Notification No. 22/2016-ST grants exemption from service tax to the specified services provided by the Government. Some of the exempted services are as under:

- Issuance of passport, visa, driving license, birth certificate or death certificate;
- Services where the gross amount charged for the services does not exceed INR 5,000. It is also not available on continuous supply of services where the value of taxable services exceeds INR 5,000 per year;
- Fines or liquidated damages payable to the

government for breach/non-performance of contracts;

- Registration under any law;
- Testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law;
- Assignment of right to use any natural resources, where such right was assigned before 1 April, 2016. This exemption was available only on one time charges payable, either upfront or in instalments;
- License fee or spectrum user charges for allowing a business entity to operate as a telecom service provider or to use radio-frequency spectrum during financial year 2015-16;

- Services provided by Government by deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime Charges;

- Services provided by the Government by way of activity in relation to function entrusted to a Municipality or a Panchayat under the constitution; Services provided by a Governmental authority by way of activity in relation to function entrusted to a Panchayat under the constitution.

- Notification No. 23/2016-ST amends Service Tax Valuation Rules to provide for levy of service tax on interest chargeable

- on deferred payment, where payment for services provided by Government is allowed to be deferred on payment of interest or any other consideration.
- Notification No. 24/2016-ST amends the Point of Taxation Rules to provide that in case of services provided by the government to any business entity, the point of taxation shall be the earlier of the date on which any payment becomes due as specified in invoice, bill, challan or any other document issued by the government, or the date of actual payment.
 - Notification No. 24/2016-Central Excise (NT) amends CENVAT Credit Rules to provide that CENVAT credit of service tax paid on one time charges payable upfront or in instalments, for assignment of right to use natural resources shall be spread equally over a period of three years, instead of being spread over the period for which the rights were assigned as per previous provision. The time limit of one year for availing CENVAT credit is not applicable to CENVAT credit of service tax paid on assignment of right to use any natural resource.
 - Circular No. 192/02/2016-ST clarifies the following aspects:
 - Any activity undertaken by the Government against a consideration constitutes service, even if such activity is undertaken as a statutory or mandatory requirement under any law. As long as a payment is made for getting a service in return, it will be regarded as 'consideration for service' and would be taxable. Service tax is also applicable on any payment, in lieu of any permission or license granted by the government.
 - Taxes, cesses or duties are not consideration for any service, and hence, not subject to service tax. These taxes, cesses or duties include Excise duty, Customs duty, Service tax, State VAT, Central Sales Tax, Income-tax, Wealth-tax, Stamp duty, taxes on professions, trades, callings or employment, Octroi, Entertainment tax, Luxury tax and Property tax.
 - Fines and penalty chargeable by the government for violation of a statute, bye-laws, Rules or Regulations are not subject to service tax.
 - The circular has clarified that where natural resources were assigned before 1 April 2016, the periodical payments for use of such resources (e.g. spectrum user charges or license fees for spectrum or royalty paid on extracted coal) due after 1 April 2016, will be taxable.
 - The Circular has provided examples for determination of date on which payment for service provided by the Government becomes due. It also provides illustrations of how CENVAT credit of service tax paid on assignment of right to use natural resources is to be claimed.

The takeaways

These amendments have brought in much needed clarity on applicability of service tax on the services provided by Government and local authorities. Allowing CENVAT credit on one-time charges for assignment of right to use natural resources over three years would allow the industry to claim CENVAT credit faster, and is a welcome step. However, levying service tax on interest for deferred payment of consideration to the Government seems inconsistent with the present provisions, and the industry would wish for a reconsideration of this aspect.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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