G N LAW ASSOCIATES

ARTICLES 2005

www.gnlawassociates.com

"SSI" for Service Tax - Kudos to FM!

Author: G. Natarajan, S Jaikumar, M. Karthikeyan

Ever since the spree of expansion of the levy of service tax, we have been consistently advocating for a minimum threshold limit for the levy, as a measure of prudent tax administration. At last, the Government has conceded. Kudos to the FM! This will certainly go a long way in better tax administration by the department. Further, the minion service providers should heave a sigh of relief, for having been relieved from the rigors of the department.

In this analysis, we wish to point out the salient features of this Notification. At the same time, we also wish to point out certain irritating flaws in the relevant Notification, which, if not remedied before the coming into effect of the said Notification, would cause considerable heartburn for all concerned.

Taxable services upto an aggregate value of Rs. Four lakhs is exempted from payment of service tax. This is subject to a condition that the aggregate value of the taxable services, rendered by a service provider, from one or more premises, shall not exceed Rs. Four lakhs, during the preceding financial year. It may be observed that if a person is rendering several services, the value of all such services shall be clubbed, for the purpose of determining this eligibility limit. Similarly, if a person is rendering services from more than one premises, the value of services, rendered from all such premises shall also be clubbed together to determine the eligibility limit. Similarly, the exemption limit of Rs. Four Lakhs is also not independent for different services and different locations. The exemption is available in respect of the value of services in respect of all services / all locations, cumulatively.

If the service is provided under the brand name of other person, this exemption is not applicable. For example, leading service providers under the category of courier service are allowing several other persons, to carry on the courier service in specific locations, under their brand names. In such situations, the benefit of this exemption shall not be available.

This exemption is not applicable to those persons, who are liable for payment of service tax in terms of Section 68 (2) of the Finance Act, 1994. As per the said section and by virtue of the Rules made thereunder, service tax liability is cast on persons other than service providers, in the following cases.

1) In respect of the Goods Transport Agency Services, the liability is on the person paying the freight, in specified circumstances.
2) In case where the service provider is outside India, the liability for payment of service tax is on the recipient of service.
3) In respect of insurance auxiliary services rendered by insurance agents, the levy is on the insurance companies.

The above persons, are not entitled to the benefit of this exemption. To elaborate further, even if the value of taxable service rendered by a GTA is less than Rs.Four lakhs, during the preceding financial year, the person receiving the services of GTA and is liable for payment of service tax thereon, is not entitled for the benefit of this Notification. On the other hand, those GTAs, whose value of taxable service is within Rs. Four Lakhs during the preceding financial year, can claim the benefit of this exemption, wherever they are liable for payment of service tax (when the consignor and the consignee are not falling under the specified categories). It should also be noted that while determining the eligibility of GTAs, to claim the benefit of this notification, the value of taxable services in respect of which the GTA is liable for payment of service tax alone, shall be taken into account and the value of taxable service, in respect of which the consignor / consignee is liable for payment of service tax, shall not be taken into account.

Any service provider, who is otherwise eligible to avail the benefit of this exemption, can also opt not to avail this exemption and pay normal service tax. If such option is exercised once, the same cannot be withdrawn, during the same financial year.

Any service provider, who avails this exemption, shall not avail Cenvat Credit of service tax paid on input services, which are used in such taxable services, for which the benefit of the exemption is claimed.

Any service provider, who avails this exemption shall not avail Cenvat Credit of duties of excise paid on capital goods, which are received by him, during the period of availment of this exemption.

Such service providers, who have opted for this exemption can avail Cenvat Credit only in respect of the inputs and input services, received on or after the date, on which he starts paying service tax.

At the time of opting for this exemption, if a service provider is having stock of credit availed inputs, lying in stock or in process, the same shall be quantified and reversed / paid. If any credit remains after such reversal, such credit cannot at all be used in any of the manner prescribed under Rule 3 (4) of the Cenvat Credit Rules, 2004 but such balance shall lapse. It is interesting to note that if such provider, who is opting for this exemption is also a manufacturer, the balance amount of credit availed by him on inputs in respect of the service activity, after reversing the quantum attributable to the inputs lying in stock and in process, shall lapse. Such credit cannot also be used by him for payment of excise duty on his final products.

The above provisions relating to availment of Cenvat Credit are giving raise to the following questions.

This exemption is effective from 01.04.2005. A service provider, whose value of taxable service is less than Rs, four lakhs during year 2004-2005 is opting to avail the benefit of this exemption for the year 2000-06. If he has already availed credit on any input services during the year 2004-05, which are continuous in nature (i.e which are continued to be used for rendering output services during the year 200506 also, he has to quantify the proportionate credit and reverse the same, as the reversal in respect of input services is contemplated, with reference to the input services which are used for rendering services, the exemption is sought to be availed. Quantifying such proportion, in respect of each and every continuing input service, may be a difficult exercise. But, this restriction is not applicable for inputs and capital goods. The only condition with regard to inputs and capital goods is that credit thereof shall not be availed, only in respect of those inputs / capital goods, which are received during the period of exemption.

In the analogous SSI exemption under Central Excise, availment of credit on capital goods is not barred. This is due to the reason that capital goods would be used for a considerably longer period, i.e. even after crossing the exemption limit. Going by the same logic, availment of credit on capital goods should not have been barred under this notification.

It may be observed that what is relevant for determining the eligibility for claiming the benefit of this exemption is the value of taxable services rendered, during the preceding financial year, irrespective of its realization. But, the exemption is extended to the initial realizations, during the respective financial year, irrespective of the period to which it belongs. It is also worthwhile to remember, that the levy of service tax is only upon realisation. The above facts lead to following question, while availing this exemption.

Let us assume that a service provider has billed for taxable services to the tune of Rs.3,50,000 during the year 2004-2005 and also charged service tax thereon. Out of which he has realized only Rs.3,00,000 during the same year. As the value of taxable service rendered by him during the preceding financial year is less than Rs.4,00,000 he is entitled for the exemption, during the year 2005-06. During the period from April 2005, he has rendered services and realized an amount of Rs.3,50,000 (not from the existing outstanding amount of Rs.50,000) and has not paid any service tax thereon. Next, he realized, the outstanding amount, pertaining to the year 2004-05, along with service tax, as he has already charged service tax on these bills raised during 2004-05. As the consecutive reaslisations have to be considered chronologically, the said amount of Rs.50,000 shall also be considered for the purpose of the exemption limit of Rs.4,00,000. Though he is entitled for the benefit of further Rs.50,000 (Rs.3,50,000 so far availed), he has to forego the same, in as much as he has already charged and collected service tax on the next realized amount of Rs.50,000, during last year. Otherwise, in as much as he has collected service tax on this amount, section 11 D of the Central Excise Act, 1944, will come into play. So, though he has availed exemption only for Rs.3,50,000 and is entitled to avail the exemption for another Rs.50,000, he has to forego the same, as the next realization of Rs.50,000, is in respect of those services rendered by him, on which he has already charged service tax. Otherwise, he has to ask the persons,

to whom he has rendered service in respect of this Rs.50,000, not to make the payments to him, till he crosses the exemption limit of Rs.4,00,000!

What should have been done in this regard is that while defining the term " aggregate value not exceeding four lakhs rupees" in Explanation B, the value of taxable service, on which the service provider is required to pay / paid service tax should have been excluded.

While calculating the exemption limit of Rs.4,00,000, the realizations out of exempted services, shall not be taken into account.

While once again praising the Government for taking this bold initiative, we also request them to correct the above irritants in the Notification, before it is put into effect.