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Service Tax – 18 to 30 – Draconian



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Of an overall positive budget in so far as it relates to service tax, if there is one amendment which can be labelled as draconian, it is enhancing the normal period for raising demand from 18 months to 30 months. For Excise and Customs, it has been raised from one year to two years.

The very rationale of having additional six months for service tax demands than Customs and Excise, itself is flawed. Presumably this additional six months has been granted for service tax, on the ground that unlike Excise, it is half yearly return under Service Tax. But let us see how it operates.

For example, the return for the half year ending March 2015 is to be filed on or before 25.04.2015 and let us assume that a service provider has filed the return on 25.04.2015. As per section 73, of the Finance Act, 1994 the department can issue a demand notice, for cases not involving fraud, suppression, etc. within eighteen months from the "relevant date". The relevant date, as defined in the section would be

"where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed".

So the show cause notice for the half year ending March 2015 (Oct 2014 to Mar 2015) could be issued on or before 24.10.2016. It may be noted that the notice can cover the period from Oct 2014, a well two years. So, as it is half yearly return in Service Tax, the department is not losing six months of demand period, but in fact gaining six months.

Now with the enhancement of eighteen months to thirty months, the demand could cover 36 months, i.e. a cool 3 years.

It is highly condemnable to have a normal demand period of 3 years, for an indirect taxes. Considering the issues of interpretation and confusions prevalent, if the demands are raised for past three years, how the service provider can collect the same from the service recipients. In fact indirect taxes require a less period of demand considering the genuine difficulties in collecting past levies from the customers and also in view of the fact that in many cases the margin of service providers would not cover any additional service tax liabilities and attendant interest liabilities.

So, there is every justification at least to retain, if not reduce, the normal period of demand under service tax as eighteen months, so that demands could be for a period of two years, as in the case of excise and customs.

Another flipside of this amendment is it will promote inaction, inefficiency and lethargy in the department as they have longer period to raise demands.

Before parting...

But the time limit for claiming any refund from the department still remains at one year.
