

Interactive Session With Bangalore Service Tax Commissioners An Excellent Attempt Worth Emulating By Other Commissionerates – Aug 20, 2009

INTERACTIVE SESSION WITH BANGALORE SERVICE TAX COMMISSIONERS – AN EXCELLENT ATTEMPT WORTH EMULATING BY OTHER COMMISSIONERATES By S Sivakumar, CA

CII, Bangalore had organized an excellent interactive session with the top officials of the Service tax and Central Excise Departments, Bangalore, earlier today. Some of the senior officials who participated in today's interactive session included-

- Mr Subhash Chander – Chief Commissioner of Central Excise, Bangalore Zone having jurisdiction over service tax matters
- Mr D P Nagendra Kumar – Commissioner, LTU, Bangalore
- Mr Shravan Kumar – Addl Commissioner, Service tax Commissionerate, Bangalore
- Mr Amitesh Bharat Singh – Joint Commissioner, Customs, Central Excise & Service Tax, Belgaum

The Joint Commissioner, LTU, Bangalore also participated in the interactive session.

In his welcome address, Mr Subhash Chander discussed the broad issues related to the implementation of GST and impressed upon CII to get involved in the GST process, along with the other Trade Associations.

Here's a summary of the important issues that were raised and the responses that were provided by the Departmental officers:

1. Delay / Denial of refunds on service tax wrt services exporters

In respect of the several questions that the participants had asked, the responses of the Department are summarized below:

- a. Enough care is not taken by the refund claimants in ensuring that proper documents including the documents based on which Cenvat credit has been taken, are submitted.
- b. Issues arise on account of basic deficiencies in the documents, in respect of which, Cenvat credit refund is claimed. Some of the invoices are not addressed to the refund claimant, etc. and Department is forced to reject claims.
- c. As per Rule 5 of the Cenvat Credit Rules, 2004, the 'input service' should be 'used' to provide the output service and this creates interpretational problems.
- d. Refund claimants ask for time for replying to Show Cause Notices, delaying the disposal of the claims.

The participants were assured that immediate steps would be taken to clear the back log of refund applications in the Bangalore Commissionerate and that, a pro-active approach would be taken. Deficiency slips would be issued in respect of refund applications would also be issued immediately. The Chief Commissioner assured that all refund claims would be processed within 3 months of the date of submission of the refund applications. Commissioner-LTU also assured that immediate steps would be taken to dispose of the refund claims expeditiously.

It was pointed out by the participants that the service tax refund is being granted only in respect of four or five inputs services, some of which are, viz. Renting of Immovable Property services, Maintenance or Repair services for computers, International Courier services and Telecommunication services. The Departmental officers replied that, given the wording used in Rule 5, a case to case approach would have to be taken.

In reply to a query on the standard list of documents required to be filed along with refund claims, the Departmental Officers also pointed out that the standard list of documents has already been put in the website of the Bangalore Service tax Department.

Our comments : With the assurances given by the Departmental officers, one hopes that the process of the disposal of the refund claims gets smoothened.

2. Applicability of service tax on import of services from April 18, 2006

It was pointed out that the High Courts in Delhi and Mumbai have held that service tax on import of services cannot be levied prior to April 18, 2006 and that the Department should issue suitable guidelines to the Field Force not to ask for service tax to be paid on imported services prior to April 18, 2006.

In response, the Departmental officers pointed out that the Department has gone on appeal to the Supreme Court and that, pending a final decision from the Supreme Court, only 'protective' Show Cause Notices would be issued and that, the Department would not agitate the issues for now.

3. Cenvat Credit on service tax paid under the Reverse Charge Mechanism

It was pointed out that some audit teams are objecting to the availment of Cenvat credit in respect of the service tax paid under the Reverse Charge Mechanism. The Departmental officers referred to a communication from the Board dated 16th July 2009, wherein it has been clarified that, Cenvat credit can be availed in respect of service tax paid on import of services, so long as these services qualify as 'input services' for purposes of availment of Cenvat credit.

Our comments : The Department can share the contents of the communication dated July 16, 2009 for the benefit of the assessees.

4. Exemption /Abatement on materials supplied in comprehensive AMCs

It was pointed that, in respect of Annual Maintenance Contracts, there is a double levy in terms of levy of VAT and Service tax in respect of the same transactional value, despite that Notification No. 12/2003 provides for the deduction of the value of goods sold to the recipient of service.

The Chief Commissioner assured to look into this matter.

5. Clarification on services which are 'wholly consumed' within the SEZ

It was submitted that Notification No. 9/2009, as amended, provides for exemption from levy of service tax, in respect of service providers whose services are 'wholly consumed' within the SEZ. In the absence of a definition or explanation as to how services could be deemed to be 'wholly consumed' within the SEZ, service providers rendering services to SEZ Developers/SEZ Units run the risk of being asked by the Department to

The Departmental officers agreed to examine the issue and also pointed out that, much of the confusion prevailing in respect of services rendered to SEZs would get solved, once the rules dealing with the place of delivery, etc. are issued.

Our comments : As of now, it would then seem that the confusion as to which service is to be treated as having been 'wholly consumed' would continue and service providers would continue to grope in confusion, which is unfortunate.

6. Service tax on Renting of Immovable Property services

It was pointed out that the Department issue a clarification in respect of the applicability of servicetax on the renting of immovable property services, in tune with the decision of the Delhi High Court in Home Solutions Retain India Ltd case.

The Departmental officers replied that as the Government has already preferred an SLP with the Supreme Court and that, the matter has not reached the stage of finality for now. (The Asst Commissioner of Service tax, Bangalore has already started issuing notices to landlords / lessors, asking them to pay service tax on rentals, in the light of the SLP filed by the Government).

Our comments : Though it looks like the Department is not going after the landlords / lessors, the issue continues to evade a solution

7. Refund of service tax paid on construction of residential complexes

To a specific query on whether the Board Circular No. 108/02/2009-ST dated January 29, 2009 covered 'works contract' services, the Addl Commissioner, Service tax Commissionerate, Bangalore opined that the Circular does not cover 'works contract' services, as, in the case of a works contract, there is an involvement of 'two parties' and that it cannot be said that there is 'self service'.

In response to a specific query on whether the Board Circular covered the two agreements system, there was no unanimity of view.

\The Departmental officers suggested that the Developers/Builders can consolidate the refund claims of their customers and handle the issue vis-a-vis the Department

\Our comments : Even after seven months of its issue, the Board Circular No. 108/02/2009 continues to confuse rather than clarify. The Board should come out with one more circular, clearly clarifying the issues involved including the applicability of the Circular on tripartite agreements, works contracts, etc.

One doesn't understand as to how, the Developer/Builder can handle the refund claims related to the service tax paid by flat purchasers.

One can clearly see that even the senior Departmental Officers do not seem to have clarity on the issues covered by the Circular No. 108/02/2009 and one can imagine the plight of the Developers and Builders and of course, the flat purchasers

8. On a request that the date for payment of service tax should be extended, the Chief Commissioner said that the issue would need to be highlighted to the Board

9. Service tax on software transactions

There was a submission that not enough clarity prevails at the level of the field officers, on the applicability of Notification No. 20/2009-CE and in terms of Section 65(105)(zzzzz)(v), in terms of the applicability of service tax on shrink wrapped software (wherein there is a composite value for the software and the license cost) and on the value of software licenses in respect of which, VAT is levied, leading to a double levy of service tax and VAT.

The Departmental Officers, without giving straight answer, agreed that the issue would need to be discussed at the Board level.

Our comments : The confusion regarding the levy of service tax and VAT on the same transaction value involving transfer of software licenses, would continue to haunt the IT industry.

10. Service tax on cross charges

It was pointed out that service tax was being levied on cross charges, involving debiting of expenses by one group company to another group. It was further pointed out that it was the Industry's understanding that there should be no service tax on cross charges for other third party expenses like rent, telephone, travel expenses, etc.

The Joint Commissioner replied that some element of cost is always added to these expenses, while being debited and that, these services could get covered under 'Business Auxiliary Services' or 'Business Support Services'

The Joint Commissioner further opined that no service tax would get levied in cases involving the 'pure agent' concept.

Our comments : It is impossible for the 'pure agent' concept, as laid down in the Service Tax (Determination of Value) Rules, as we know, to be fulfilled, given the pre-requisites . Would this mean that all reimbursements or debits for sharing of expenses would attract service tax, as per the Department?

11. Time Limit for replying to Show Cause Notices from the Service Tax Department

The Chief Commissioner announced that assesseees can take 30 days to reply to Show Cause Notices, even if the period specified in the SCNs is lesser.

Our comments : This is a highly welcome announcement.

12. Service Tax Audit Procedures should involve desk audit first

It was stated that desk audit is being conducted by the Service Tax Audit Team before commencing the audit and that, this practice would benefit the assesseees and the Department to a great extent.

The Interactive Sessions was organized by the Confederation of Indian Industry, Bangalore Branch. Mr Jayaraman, Convenor, CII Karnataka Economic Affairs Panel conducted the session. Mr Mahesh Jaisingh, Partner, BMR Advisors collated the issues raised by the participants. Both these gentlemen and the other officers of CII deserve our thanks.

Our overall comments :

It was an excellent idea to have an interactive session with the top brass of the Service tax Department and one must thank the Chief Commissioner of Central Excise, the Commissioner-LTU and the Additional and Joint Commissioners for responding to the issues raised by the participants with a great degree of professionalism (and humour). One looks forward to similar interactive meetings at more frequent intervals, in the future.

An attempt worth emulating, by other Commissionerates.

Compiled for www.servicetaxandvatadvisor.com by S Sivakumar, CA.