

Service Tax Rate

When we talk about any ‘rate’, we expect a one word answer, and immediate visualisation in our mind is a number – either absolute number say ₹20,000/- per unit or a percentage, say 10% of the total value of a given parameter or some combination thereof. Thus, when I was asked to write an article on service tax rate, in the first flash of thought all I could think was that the present rate of service tax is 12.36% and it has been changed over the period of time in the past 18 years from 5% to 8% to 10.2% to 12.24% to 12.36% to 10.3% to again 12.36%. And yes, alternate rates of service tax are also there for services of air travel agents, life insurance, sale or purchase of foreign currency, and promotion of games of chance. Apart from this, composition rate or abated values of services have been provided for Works Contract and some other services. Though there could be a little discussion on the percentages of abated values, but an article cannot be this small and in fact, this cannot be the subject matter of an article. Then I started expanding my thought process and realised that actually I would want to say a lot on the tax rate. The key of discussion is not the rate itself, the discussion is that in case of change in the service tax rate from a given cut-off period, what should be the rate of service tax for the transactions which are in the process of execution before and after that cut-off date. As in the past 17 years, this point has not been dealt very clearly in the law, different views and interpretations were used to take a view. I have mentioned 17 years here, because from the last year, i.e., from 01-04-2011, Point of Taxation Rules, 2011 have taken care of this aspect and have defined the parameters to determine as to which rate would apply for a transaction across the cut-off date of change in the rate.



Let us start from the beginning. It was in the year 2003 that the rate of service tax changed for the first time from 5% to 8%. In this regard, the CBEC Circular 56/5/2003-ST, dated 25-04-2003 said that, “if payments are received after the Finance Bill 2003 was passed, the rate of tax applicable would be 5% so long as the billing has been made prior to the date of passing of the Finance Bill. If the billing is made subsequent to the date of passing of the Finance Bill, the service tax would be applicable at the enhanced rate of 8%.” Thus, the tax rate position was simple and clear but it was not annexed with the ‘time of provision of service’, the two parameters used were the date of billing and the date of payment.

Though the above position was followed by the assessees and accepted by the Department in most of the cases, the South Zonal Bench of the Bangalore Tribunal, in case of *Art Leasing Ltd. Vs. CCE*, took a view, that the relevant date for determining service tax liability was taxable event which was ‘rendition of service’ and thus held that in case of hire purchase agreement, it was the date of agreement, with reference to which taxability (with an extended interpretation, it may be construed as the rate of tax also) needs to be determined, and that the date of receipt of consideration,



CA. Rohini Aggarawal

(The author is a member of the Institute. She can be reached at eboard@icai.org)

i.e., ‘installment’ was not relevant therefore. It was thus held that for all Hire Purchase Contracts entered prior to 14-05-2003, the appellant rightly remitted Service tax at the rate of 5%, where the contention of revenue was that the appellant was required to remit Service tax @ 8% as the hire purchase instalments were received after 14-05-2003. The difference in the view of the Department and the view taken by the Tribunal reflects that the legal position with respect to applicable rate of tax across the change date was not settled and was susceptible to dispute.

Next time, when the service tax rate(s) were changed in the years 2004, 2006, 2007 and 2009, there was no communication from the Department on how the rate should be applied for a transaction across the cut-off date. The confusion prevailed on this account and different assessees took different views – some opted for the rate applicable on the date of invoice; some opted for the rate applicable on the date of receipt of payment and some opted for the rate applicable on the date of rendition of service.

Also, there was another aspect of this position, which was not exactly related to the rate but the fundamental issue involved therein was similar – that the service which was not taxable prior to a given cut-off date and partially performed before the said date, where the billing and the payment for that service happens after the date that service became taxable – should the tax be applicable on the value of service pertaining to the period before the change date? This was taken care of vide proviso to Rule 6(1) of the Service Tax Rules, 1994, which stated that, “notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.” This proviso recognised that for the purpose of taxation, the ‘time of rendition of service’ is relevant. In other words, from this proviso, it may be inferred that the taxable event was recognised as ‘the rendition of service’, and the service tax was to be applied accordingly. However, this philosophy was not reflected or conveyed by the Government with reference to the application of service tax rate in case of change in the rate across a given date.

Finally, the above confusion was taken care of in the year 2011, vide the Point of Taxation (POT) Rules, 2011, which in the rule 4 thereof, specifically provided parameters to determine the applicable rate of service

With the rule 4 of the POT Rules, effective from 1st April, 2011, the law relating to the tax rate seems to be perfectly in place, and a not so good part is that with the rule 5 of the POT Rules, the law relating to taxation of newly taxable services has been modified to change a well defined tax position into a loosely defined one.

tax across the change date and also took care of the change date of the abated value of a given service. The rule provides a combination of three parameters to determine the applicable rate of service tax with reference to the time period before or after the change date, that is – (i) the date of provision (or rendition) of service; (ii) the date of billing; and (iii) the date of payment. In simple terms, it may be said that if any two of the three incidents happen in a given period, the tax rate in that period would be applicable. The notable part is that the parameters are so selected as to consider the overall scheme of service taxation and are not limited to the date of ‘rendition of service’ only, and sounds scientifically thought over.

But an interesting turn has taken place in case of taxation of services which are made newly taxable across a change date. The taxation of such services which was earlier to be done with reference to the proviso to Rule 6(1) of the Service Tax Rules discussed above is to be done with reference to rule 5 of the POT Rules effective from 01-04-2011. The rules say that in case payment is received and the invoice is issued before the change date or within the stipulated time, tax is not payable to the extent of such payment. Accordingly, the taxability which was earlier annexed to the ‘time of provision or rendition of service’ has now been annexed to the date of billing and the receipt of charges for the service, without any reference to the date of rendition of service. The criteria sounds simple to apply, however, it does not gel with the overall scheme of service taxation.

The good part is that with the rule 4 of the POT Rules, effective from 1st April, 2011, the law relating to the tax rate seems to be perfectly in place, and a not so good part is that with the rule 5 of the POT Rules, the law relating to taxation of newly taxable services has been modified to change a well defined tax position into a loosely defined one. ■