

Types of assessment under Service Tax

This article deals with various aspect of assessment under service tax. Unlike in the current scenario there is the system of self assessment in the past there was no such system of self assessment. In past practices under service tax there was the system of regular assessment under which the assessee use of file their return under section 70 and thereafter the Central Excise officer after obtaining written permission from the Commissioner of Central Excise serves the notice for making the assessment under section 71 of the Finance Act, 1994. This articles is an attempt to cover various aspects of assessment.

Types of assessment

At present there are three types of assessment under service tax :-

1. Self assessment
2. Provisional assessment
3. Best Judgment assessment (Section 72)

Self assessment

The Finance act, 2001 has introduced self assessment for service tax returns; thereby sparing the assesseees from the rigors of routine scrutiny and assessment. The facility of self –assessment was accorded to various assesseees by amendment in Section 70 of the act. Prior to amendment by Finance Act, 2001 section 70 stood as under:-

“70. Every person liable to pay the service tax shall furnish or cause to be furnished to the Central Excise Officer, a return in such form and in such manner and at such frequency as may be prescribed.”

The amendment brought in by Finance act, 2001 is as under:-

*“70. Every person liable to pay the service tax **shall himself assess the tax due** on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.”*

In the system prior to 2004, the assesseees use to file their returns under section 70 thereafter the Superintendent of Central Excise on the basis of information contained in the return filed under section 70 verify the correctness of the tax assessed on the services provided. If on verification the Superintendent was of the opinion that service tax on any service provided has escaped assessment or has been under assessed, the Superintendent refers the case to AC / DC, who pass the order of assessment as they

thinks fit. The Finance Act, 2004 omitted section 71 w.e.f 10-09-2004 which provided a great relief to the assesses.

Therefore, after 2004 the return filed under section 70 is conclusive and it is not open for the department to call the documents or other information to verify the return, unless the department has some reasonable grounds to believe that assessee has not paid service tax properly.

Provisional Assessment

Where the assessee for any reason is not able to correctly estimate his service tax liability for any particular quarter or month, then he may request in writing to the AC / DC of Central Excise, as the case may be, giving reasons for payment of service tax on provisional basis and the AC / DC on receipt of such application may allow the assessee for payment of service tax on provisional basis on such value of taxable service as may be specified by him.

Procedure for provisional assessment

- 1. Informing the department:** The assessee shall inform the department stating the reason why he wants to pay the service tax on provisional basis. There is no standard format or prescribed form for the application. It can be given on the letter head of the assessee. The AC / DC on receipt of such application may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.
- 2. Form ST 3A with the Service Tax return:** Prior to 01-04-2010, the service tax return was filed manually, at that time there was a prescribed format for ST 3A which was required to be annexed with the half yearly return i.e. ST 3. In the present scenario the returns are filed online. There is no system of filing ST 3A separately. Infact in the ST 3 return itself there is column A13 in which the provisional order number as well as date is only required to be furnished. However, sub rule (5) of rule 6 is not yet updated as it still contains that - *"he shall file a statement giving details of difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form ST 3A accompanying the quarterly or half-yearly return, as the case may be."*
- 3. Completion of 'Provisional Assessment':** The AC / DC of Central Excise shall complete the assessment, whenever they deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.
- 4. Service Tax payable or refund due on final assessment:** After the completion of final assessment, the assessee may be required to pay service tax on the additions

made by AC / DC. Similarly, he may entitle to refund in case he paid excess service tax earlier.

- In case the assessee is required to pay differential tax after the final assessment, he shall be liable to pay interest on the amount so payable to the Central Government from the first day of the month succeeding the month for which such amount is determined, till the date of payment thereof. The rate of interest would be the rate specified by the Central Government by notification issued under section 11AA or section 11AB of the Central Excise Act.
- In case the assessee is entitled to refund then he shall be paid interest on such refund from the first day of the month succeeding the month for which such refund is determined, till the date of refund. The rate of interest would be the rate specified by the Central Government by notification issued under section 11BB of the act, *ibid*.

Best Judgment Assessment (Section 72)

Section 72 is reintroduced by the Finance Act, 2008 to authorize the Central Excise Officer to make assessment in the following case –

1. Where the person liable to pay service tax fails to furnish the return under section 70;
2. Where the person having made the return, fails to assess the tax in accordance with the provisions of this chapter or rules made thereunder.

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment