

Joint Charge - Compliance & Credits

By: [Madhukar N Hiregange](#)

Introduction:

The service tax law based on negative based taxation has been effective from 1st of July 2012. This regime is expected to augment the government's revenue even in this period of slack business/ growth by tapping hitherto untaxed areas of various activities. It is expected that the new law would lead to large amount of disputes and challenges where unintended transactions would be subjected to the tax. One of the main issues causing concern in the trade is the joint charge mechanism. The CA who is doing tax audit, or statutory audit may find non-compliances with the joint charge mechanism for 2013-14 and may need to examine implications on the true and fair position of the financials.

This article discusses the common issues and eligible cenvat credits for this mechanism post 01.07.2012.

What is Joint Charge Mechanism?

As per the concept of joint charge, for the same service both the service provider as well as service receiver are made liable for payment of service tax on the same service to the extent notified depending on the status of the provider and receiver. Further the service receiver is not eligible for the Rs. 10 Lakhs basic service tax exemption. The liability of service provider is independent of the service receiver's liability. The failure to comply with the provisions by one person on his part would not impact the compliance requirement of other person or visa versa.

What is scope of Joint charge mechanism?

Specified service providers and specified services under Joint Charge Mechanism

At the same time the joint charge mechanism is applicable to a body corporate business entity only on following services provided or agreed to be provided by individual, sole proprietor, partnership, association to it by way of

- (a) renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business, or
- (b) supply of manpower for any purpose or security services, or

(c) service portion in execution of a works contract;

The service tax liability under joint charge to be borne by recipient body corporate business entity as follows-

- a. to extent of 40 percent of total service tax is payable by service recipient in respect of services of renting of motor vehicle designed to carry passengers.
- b. 75 percent of total service tax payable on manpower supply and security services (for security services joint charge applies from 7.8.2012).
- c. 50 percent of total service tax payable on works contract services.

The service tax rate is 12.36 percent .

Common Compliance and credits issues

Issues:

While adding the joint charge leviable services such as works contract to registration certificate, should we include the services as a receiver under the service provider column?

The service has to be included under service provider column itself.

Whether company is liable under reverse or joint charge mechanism for consultancy services by individual tax consultants?

All services are not specified. The service tax liability under joint charge does not arise to company in respect of pure consultancy services.

The company supplies computers and installs the same. The installation is done on subcontract basis by individual contractors. Is company liable under joint charge mechanism?

The service tax is payable under joint charge mechanism on comprehensive material and labour contracts of nature of works contract executed by sub-contractor to company. As the sub-contractors are executing pure labour jobs, company is not liable under joint charge mechanism. Only works contract [material plus labour jobs] by individual sub-contractor could be liable in the hands of company.

Whether the company liable under joint charge when it is supplying steel and cement, other construction materials and individual contractor merely provides construction services?

If contracts are presently being given as material plus labour, a possible way could be for company to bring in materials and contractor to merely execute labour jobs. As it is merely construction services done as a pure labour job by contractor. In such case there is no joint charge mechanism applicable to company.

The company receives security services from firm having a turnover of Rs 5 Lakhs? Whether company is exempted from joint charge as firm is small service provider?

The service recipient is liable to pay service tax irrespective of the fact whether the service provider was exempted or not by virtue of small service provider exemption under [Notification No. 33/2012-ST dated 20.06.2012](#). In other words even if the total value of service provider services is less than 10 lakhs the service recipient wherever liable to pay service tax has to pay tax.

Whether company needs to pay service tax if the works contract executed by individual contractor to company is for construction of public road to be used by public?

No, then service recipient need not pay service tax.

The company has not deposited the service tax under the joint charge mechanism till date. Should it calculate the monthly liability and pay it with the interest at the rate of 18 percent for the actual days of delay or monthly at the rate of 1.5 percent ?

The service tax liability arises when the payment is made. If payment is not made within 6 months of date of invoice, then service tax liability under joint charge to be paid with interest at 18 percent for delay payment for number of days of delay.

Where the service provider has charged full ST would the receiver still have to pay in case of joint charge?

Yes. The receiver would still be liable to discharge the tax on his portion. However may avail the eligible cenvat credit. The company can take a stand not to pay service tax on the said service as the same has already been taxed by the service provider as held in the case of [Umasons Auto Compo Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Aurangabad \[2014 \(2\) TMI 100 - CESTAT MUMBAI\]](#). If the company decides not to pay service tax, then it should ensure that the service tax has been correctly discharged by the service provider.

Whether service recipient company engaged in providing taxable testing services can avail cenvat credits of the service tax paid on the construction of new building done by individual contractor under joint charge mechanism?

The service recipient is not eligible to claim CENVAT Credit of service tax paid on new

construction due to specific restriction in input services definition under Cenvat Credit Rules wef 1.4.2011.

Conclusion:

The new scheme of taxation under joint charge mechanism is to enable the wider coverage of especially unorganized sector and bring them into service tax net. However practically there may be lot of challenges which the businessmen have to face initially to align the existing practices to the new scheme considering variations in business models.