

Avoiding common errors in filing of service tax return

-By CA Ashish Chaudhary

Self assessment under service tax has been started in the year 2001. In any self assessment taxation system, the onus is on the assessee to make true disclosure of all statutory information required to be disclosed. Non/wrong disclosure of any material information could result in allegation of suppression or deliberate wrong disclosure which may result in invocation of larger period of 5 years along with imposition of penalty which now has become mandatory. Apart, this could result into higher chances of assessee being selected from scrutiny, audit or investigation by department. The cost of error in service tax law is very huge as it may culminate into demand of service tax + interest upto 30% + penalty upto 100%. This necessitates that return is filed by assessee making true disclosure of all relevant information so that no allegation of suppression etc. can be made.

In the course of filing of ST-3 return, certain errors may be committed which could result in the return being incorrect and possibly may be liable for rejection. The paper writer has discussed certain such aspects where generally errors are committed suggesting the manner in which these could be mitigated/avoided.

- a) **Adjustment of tax rate change:** The rate of tax has increased from 12.36% to 14% w.e.f. 1.6.2015. It is expected that new return utility would be issued by department. In case new utility is not issued, existing excel utility may also be used as it provides option for change in rate of tax by adding additional row in which rate of tax could be put 14% without any mention regarding education cess and SHE cess. Though utility will automatically calculate cess also, it needs to be converted to zero. While validating return at the end, a pop up will appear mentioning that there is difference in the cess calculated by utility and entered into by the assessee. But this needs to be ignored and file the return.
- b) **Non-filing of return for few categories:** As per the provisions of Service Tax, assesseees are required to file the Service Tax return for all the categories of Service Tax. But some assesseees who are providing multiple services would not file the ST-3 return for few of the Services due to reason that there were no transactions for the return period.
- c) **Return filing in wrong category:** Some times, the assesseees would file the return in by selecting wrong category of services. Example, return for works

contract filed under construction of complex service category. This could result into denial of some benefit which may be available in the form of abatement/exemption.

- d) **Non-disclosure of exemption / abatements in the ST-3 Return:** In the ST-3 return, the Assessee's require to disclose total value of service which also includes exemption / abated value of Services. Later, the exempted / abated value of Services is required to be disclosed and the same would be considered before computing the Service Tax. Some Assessee's would show only the net amount of Taxable Services in the ST-3 return which results in non-disclosure of exemption / abated portion in the ST-3 return. Showing the exempted value of Services in the ST-3 returns would help the assessee to prove that they have not suppressed the facts to the department.
- e) **Non compliance of Rule 6 for reversal of credit:** It could be possible that assessee may be providing taxable as well as exempted services but may have not reversed the credit pertaining to exempted services. Especially in case of trading of goods. Though may be inadvertent yet it could invite allegation of suppression if not disclosed in the return. There is separate section for detailed disclosure of all cenvat related compliances which need to be properly disclosed.
- f) **Non disclosure of credit note adjustment:** Credit notes issued by service providers may be adjusted from revenue and only net figure shown. It may be possible that the reason for which credit notes have been issued are not permissible for deduction. All credit notes issued must be separately shown in the column of Rule 6 (3) adjustment and tax credit to be availed.
- g) **Revising the revised/belated return:** Return once revised may not again be revised. Similarly, belated return may not be revised.
- h) Difference in closing balance of CENVAT Credit of previous ST-3 return to ST-3 return for the current period.
- i) Non-disclosure of challan numbers in the ST-3 return. Due to this, there is a risk of return being rejected and the department may write a letter to the assessee for clarification.
- j) Non-disclosure of details of Export of Services resulting in denying of refund under Rule 5 of Cenvat Credit rules, 2004 at the first stage.
- k) Credit distributed by input service distributor not disclosed by ISD or recipient unit

l) Non disclosure of amount claimed as pure reimbursement in the capacity of pure agent.

m) And many more.....

There is need to have proper knowledge about various intricacies related to service tax return filing so that errors are minimised and true disclosure is made as required under the law.