

## Issues w.r.t. Show Cause Notice, Adjudication and Appeal under Service Tax Law

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### Assessment under Service Tax law

- Sec.70 – Basically self-assessment.
- ST Rules defines 'assessment' to include reassessment, provisional assessment, best judgment assessment and any order of assessment in which the tax assessed is nil.
- Assessment involves determination of tax liability by a person mainly includes classification of taxable service and valuation of taxable service
- Filing of periodical returns as per law.

## Various checks by the Revenue

- Verification of periodical returns filed by the assessee.
- Audits conducted by Department, IAP, C&AG, etc.
- Investigations and intelligence.
- Opinions and conclusions of the Revenue/ Departmental officers

## Demands/Recovery provisions

- As a result of checks by the Revenue, demand or recovery issues would crop up.
- How demand/recovery is possible under law?
- Sec.73 of the Act is the only demand provision. There are certain recovery mechanism provided
- Firstly there has to be demand of tax, then recovery provisions follows. No direct recovery mechanism under Service Tax law unless tax is demanded as per law.

## Demand mechanism/provision

- Sec.73 amended from 10.9.04, which is *pari materia* with Sec.11A of CEA, 1944.
- Service Tax can be demanded only as per sec.73 and by no other means.
- Sec.73 provides for demand of any service tax not levied/paid or short-levied/paid or erroneous refund.
- Wordings in sec.73 and sec.11A are same/similar – except for one difference
- Decisions of Courts/Tribunal rendered in the context of sec.11A would *mutatis mutandis* applies to sec.73 as well

## Demand provision (contd.)

- 'Short-levy' explained in *CCE v. Cotspun Limited*, 113 ELT 353 (SC) which led to amendment to section 11A in the year 2000.
- Any proceeding under sec.73 involves three stages –
  - Issue of a show cause notice,
  - Adjudication by competent authority, and
  - Issue of a demand to recover the tax.
- Show Cause Notice is a must – See decisions in *Gokak Patel Volkart*, *Madhumilan Syntex (P) Ltd & Tin Plate Co of India Limited*.
- Letters / communications cannot be taken as a show cause notice – *Metal Forgings v. UOI*.

## Demand provision (contd.)

- There must be a valid show cause notice specifying the tax to be demanded, allegations must be clear and not vague, supply all relied upon documents, etc. Recent decisions of SC in *Ballarpur Industries Ltd* and in *Brindavan Beverages* case.
- Time-limit for issuing show cause notice:
  - Normal period of one year
  - Extended period of five year from 'relevant date'.
- Who can issue show cause notice? Territorial jurisdiction
  - Recent decision in *CCE v. Ores India (P) Ltd* and *CCE v. Integral Construction Pvt. Ltd.*

## Extended period of time

- Proviso to sec.73(1) – fraud, collusion, any willful misstatement or suppression of fact or contravention of Act/Rules with intent to evade payment of tax.
- Misstatement/suppression of fact must be “willful”.
- No suppression if all facts are within the know of Department.
- Mere inaction or omission to take registration or to pay tax not suppression of fact.
- Bonafide belief on the part of assessee about provision of law.
- Contradictory CBEC clarifications, judicial decisions, etc.
- Mere claiming taxable service under specific entry is not suppression.
- Deliberate act of withholding is a must.
- Notice must specify omissions/commissions.
- Burden of proof is on Department

## Adjudication by competent authority

- Filing of reply to show cause notice.
- Representation by authorized representative.
- Submission of evidence, cross-examination of witness.
- Precautions to be taken care while drafting the reply.
- Authorities cannot traverse beyond notice parameters. Cannot make out a new case not canvassed in the notice.
- Same officer who heard the assessee to pass the order.
- No statutory time limit for adjudication.
- Order must specify the tax demanded supported by reasons.

## Appeals under Service Tax law

- Basically two-tier appeal level – Commissioner (Appeals) and CESTAT.
- Time-limit to file appeal.
- Amendment to sec.84 by the Finance (No.2) Act, 2009. No revision powers but only review powers.
- CESTAT is final fact finding authority under law.
- In hearing appeals, both CCE(A) and CESTAT shall exercise same powers and procedure as in CEA, 1944.

## Appeals (contd.)

- Appeal to the High Court – sec.35G of CEA, 1944 is made applicable.
- Appeal to the Supreme Court – sec.35L of CEA, 1944 is made applicable.