

INDIRECT TAXES UPDATE – 137

Service Tax

Clarification regarding the provisions of Section 73, 76 and 78 of the Finance Act, 1994

a) Issuance of a Show Cause Notice (SCN)

Section 78 of Finance Act 1994 provides that person who has been served notice under the proviso to sub-section (1) of section 73 for non-payment of service tax due to fraud etc, then such person shall be liable to pay a penalty equal to 100% of the amount of such service tax along with the interest and service tax.

However where service tax and interest is paid within a period of 30 days of the date of service of notice the penalty payable shall be 15% of such service tax.

In this regard, CBEC vide *Instruction F. No. 137/46/2015-Service Tax dated August 18, 2015* has clarified the following :

- In a case involving fraud etc. if an assessee pays the tax/duty, interest and penalty equal to 15% of the tax/duty and makes a request in writing that a written SCN may not be issued to them, then in such cases the SCN can be oral and the representation against it can also be oral.
- An assessee can request for an informed waiver of a written SCN if short/non-payment of tax/duty are intimated to the assessee orally with its quantification and the assessee indicates in writing that he has been informed about such grounds and he accepts the grounds and the quantification.
- In case the assessee makes a written request for waiver of a written SCN, the thirty day period can be computed from the date of receipt of such a letter by the department.

b) Conclusion of proceedings

Section 76 of Finance Act 1994 provides that person who has been served notice under the proviso to sub-section (1) of section 73 for non-payment of service tax due to reason other than fraud etc., then such person shall be liable to pay a penalty not exceeding 10% of the amount of such service tax along with the interest and service tax.

However where service tax and interest is paid within a period of 30 days of the date of service of notice no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded

In this regard, CBEC vide *Instruction F. No. 137/46/2015-Service Tax dated August 18, 2015* has clarified **the following**:

- In cases not involving fraud, suppression of facts, etc., if the assessee pays the tax along with interest either within 30 days of the date of service of SCN or before the issuance of SCN, then in such cases proceedings shall be deemed to be concluded.
- Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by officers of DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be.
- If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.
- The conclusion of proceedings should invariably be intimated to the assessee in writing and there should not be a need to issue an adjudication order or to undertake review of such conclusion of proceedings once intimated.

[Instruction F.No.137/46/2015-Service Tax dated: August 18, 2015]

Source: www.cbec.gov.in

Disclaimer

Information published in the newsletter are taken from publicly available sources and believed to be accurate. The Indirect Taxes Committee of ICAI takes no responsibility of accuracy and reliability of information published in the newsletter. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted in any form or by any means – electronic, mechanical, photocopying, recording, or otherwise without the permission of

ICAI Feedback

The Indirect Taxes Update is an endeavour of the Indirect Taxes Committee to apprise the readers about the amendments made in various central indirect tax laws vide significant notifications, circulars etc. We welcome your feedback on the Update and its contents. Please email at idtc@icai.in for feedback.

You can also write to:

Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.) India

Website: www.idtc.icai.org