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Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 17th March, 2012

Notification No.4/2012 - Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:—

1. (1) These rules may be called the Point of Taxation (Amendment) Rules, 2012.
(2) They shall come into force on the 1st day of April, 2012.
2. In the Point of Taxation Rules, 2011 (hereinafter referred to as the said rules), in rule 2, —
 - (a) after clause (b), the following clause shall be inserted, namely :—
 - (ba) “change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder;
 - (b) in clause (c), for the words “or to be provided continuously, under a contract, for a period exceeding three months,” , the words “or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,” shall be substituted.
3. After rule 2 of the said rules, the following rule shall be inserted, namely:—

‘2A. Date of payment.— For the purposes of these rules, “date of payment” shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

 - (A) the date of payment shall be the date of credit in the bank account when —

- (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
- (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
- (iii) the payment is made by way of an instrument which is credited to a bank account,

(B) if any rule requires determination of the time or date of payment received, the expression “date of payment” shall be construed to mean such date on which the payment is received;’.

4. In rule 3 of the said rules,-

(a) in clause (a), for the proviso, the following proviso shall be substituted, namely:-

“Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service”;

(b) after clause (b), the following proviso shall be inserted, namely:—

“Provided that for the purposes of clauses (a) and (b), —

- (i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;
- (ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the

provider of taxable service, shall be determined in accordance with the provisions of clause (a).”

5. In rule 4 of the said rules, the *Explanation* shall be omitted.
6. For rule 5 of the said rules, the following shall be substituted, namely:—

“5. Payment of tax in case of new services.— Where a service is taxed for the first time, then,—

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.”.
7. Rule 6 of the said rules shall be omitted.
8. For rule 7 of the said rules, the following rule shall be substituted, namely:—

‘7. Determination of point of taxation in case of specified services or persons.— Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.’

9. After rule 8 of the said rules, the following rule shall be inserted, namely:—

“8A. Determination of point of taxation in other cases.- Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.”.

[F. No. 334 /1 /2012- TRU]



(Samar Nanda)

Under Secretary to the Government of India

Note.- The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* notification number. 18/2011 - Service Tax, dated the 1st March, 2011, G.S.R. 175 (E), dated the 1st March, 2011 and was last amended by notification number. 41/2011-Service Tax, dated the 27th June, 2011 *vide* number G.S.R. 490 (E), dated the 27th June, 2011.