

Point of Taxation (Amendment) Rules, 2012

G.S.R. (E).- In exercise of the powers conferred under clause (a) and clause (hhh) of subsection (2) of section 94 of the Finance Act, 1994, the Central Government hereby makes the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,-

1. Short title and commencement.-

(a) These rules may be called the Point of Taxation (Amendment) Rules, 2012.

(b) They shall come into force on the 1st day of July, 2012.

2. Definitions.- In these rules, unless the context otherwise requires,-

(a) “Act” means the Finance Act, 1994 (32 of 1994);

(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;

(c) “continuous supply of service” means any service which is provided, 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, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;

(d) “invoice” means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

(e) “point of taxation” means the point in time when a service shall be deemed to have been provided.

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.

3. Determination of point of taxation. - For the purposes of these rules, unless otherwise stated, “point of taxation” shall be determined in the following manner, namely:-

(a) a provision of service shall be treated as having taken place at the time when service is provided or agreed to be provided; and

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) if, before the time specified in clause (a), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

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).

Explanation.- For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Explanation 2.- For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under clause (b) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

4. Determination of point of taxation in case of change of rate of tax.-

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change of rate of tax in respect of a service, shall be determined in the following manner, namely:-

(a) in case a taxable service has been provided before the change of rate,-

(i) where the invoice for the same has been issued and the payment received after the change of rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

(ii) where the invoice has also been issued prior to change in tax rate but the payment is received after the change of rate, the point of taxation shall be the date of issuing of invoice; or

(iii) where the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the point of taxation shall be the date of payment;

(b) in case a taxable service has been provided after the change of rate,-

(i) where the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, the point of taxation shall be the date of payment; or

(ii) where the invoice has been issued and the payment for the invoice received before the change of tax rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) where the invoice has also been raised after the change of rate but the payment has been received before the change of rate, the point of taxation shall be date of issuing of invoice.

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. 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.

8. Determination of point of taxation in case of copyrights, etc.- In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect

of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

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.

9. Savings.- Nothing contained in these rules shall be applicable in case of invoices issued prior to the date from which these rules become effective.