

No. 1002-15/2011-12/Taxation/BSNL/647

Dated:- /07/2013  
21.08.2013

To

The Chief General Managers,

1. All Telecom Circles/ Metro Telephone Districts/Maintenance Regions/ Project Circles
2. Task Force/ Data Network/ NCES/ QA/ T&D/ Telecom Stores/ Telecom Factories/ CPAO (ITI Bills)/ IT Project Circle
3. ALTTC/BRBRAITT/NATFM
4. All PGMs/Sr.GMs /GMs, BSNL Corporate Office.

**Sub.: Clarifications relating to amendment made in Service Tax & Cenvat Credit Rules vide Budget 2012- reg.**

In pursuance of enactment of Finance Act, 2012 and various Notifications issued by Department of Revenue, Ministry of Finance, Government of India on the above noted subject, the amendments have been examined in Consultation with the Tax Consultant viz. M/s Ernst & Young India Pvt. Ltd. and the same are explained below which are relevant in the context of BSNL for its implementation by the BSNL Circles /Field units.

**1. ELIGIBILITY OF CENVAT CREDIT ON SERVICES OF RENTING OF MOTOR VEHICLE**

- ▶ Cenvat credit on service of 'renting of motor vehicle' has been made eligible vide the change introduced in the definition of 'input service' vide Notification No. 28/2012- CE (N.T.) dated 20-06-2012, w.e.f. 1<sup>st</sup> July 2012.
- ▶ Prior to 1 July 2012, Cenvat credit on renting of motor vehicle was available only to those service recipients for whom the credit of motor vehicles could be availed as a 'capital goods'. Since BSNL was not engaged in provision of any output service such as rent-a-cab service, for which credit of motor vehicle was available as capital goods, the Cenvat credit on the input side was not available.
- ▶ Vide Budget 2012, the definition of 'input service' and 'capital goods' have been amended. As per the amended definition, Cenvat credit is eligible on the service of renting of motor vehicle procured on or after 1 July 2012, provided the motor vehicle, which has been rented, is capital goods for the person providing such service.

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- ▶ In light of the above, BSNL would be eligible to avail Cenvat credit on input services of renting of motor vehicle, **provided the motor vehicle, which has been rented, is registered in the name of the service provider**. In order to substantiate the availment of such credit through documentary evidence, Field units of BSNL may obtain the registration certificate as documentary evidence to prove that the motor vehicle which is rented out is capital goods for the vendor.

Illustration for understanding purpose:-

- (i) Mr. "X" has rented out 5 cars to BSNL which is capital goods for him and are registered in his name. In this case, BSNL can avail Cenvat credit against Service Tax paid on rental/lease charges to Mr. "X" or Govt. of India under reverse charge mechanism.
- (ii) Mr. "Y" has rented out 5 cars to BSNL which is capital goods for him but are NOT registered in his name. In this case, BSNL can not avail Cenvat credit against Service Tax paid on rental/lease charges to Mr. "Y" or Govt. of India under reverse charge mechanism.

**2. REVERSAL OF CENVAT CREDIT ON SALE OF CAPITAL GOODS AS SCRAP/WASTE**

- ▶ Cenvat credit is available on procurement of duty paid 'capital goods' and 'inputs' in accordance with Rule 3 of Cenvat Credit Rules, 2004.
- ▶ Prior to Budget 2012, if capital goods were removed as waste/scrap by a manufacturer, then he was required to pay an amount equal to duty on transaction value. This requirement was not applicable on removal as waste/scrap by a service provider.

However, if capital goods were removed (as capital goods) after being put to use by a service provider, then he was required to pay an amount equal to Cenvat credit taken on such capital goods after reducing a percentage depending upon the period of usage of goods.

- ▶ **Vide the changes introduced by Budget 2012 with effect from 1 July 2012**, the following points need to be noted in relation to removal of capital goods as waste/ scrap:
  - Now a service provider is also required to pay an amount on such removal in accordance with amended Rule 3(5A) of Cenvat Credit Rules, 2004.
  - Such reversal is required only if the capital goods are removed after being used;



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- Higher of the following two amounts would be required to be paid under this Rule:

- (i) An amount equal to Cenvat credit, after reducing it with a prescribed percentage;
- (ii) Duty leviable of transaction value

Even if capital goods are removed as capital goods and not as waste/ scrap, even then the above Rule 3(5A) would be applicable.

- **Accordingly, BSNL would be required to reverse Cenvat credit on all removals of capital goods, which are either removed as capital goods, or as scrap/ waste.**

Illustration for understanding purpose:-

BSNL purchased Telephone equipment (Capital goods) on 01.01.2008 at a cost of Rs. 100,000/- and the same has been used for providing telephone service. Suppose Cenvatable duty paid by BSNL on it was Rs. 10,000/- and Cenvat Credit has been availed & utilized for the same. The said equipment has been decommissioned and sold out as Scrap/waste on 31.12.2012 at Rs. 20,000/- (assuming excise duty of Rs. 2,000/- payable on sale of Scrap/Waste).

- In this case, BSNL is required to reverse Cenvat Credit as per Rule 3(5A) of Cenvat Credit Rules, 2004 with effect from 01.07.2012 which is higher of the following two amounts would be required to be paid under this Rule:

- (i) An amount equal to Cenvat credit, after reducing it with a prescribed percentage; (prescribed percentage is 2.5% for each quarter for capital goods other than Computer and computer peripherals- please refer Rule 3(5A) of Cenvat Credit Rules, 2004).

No. of Quarters for the period 01.01.2008 to 31.12.2012= 20

Amount of Cenvat credit to be reversed

= Rs. 10,000- 20 Quarters \*2.5% per Quarter \*Rs. 10,000

= Rs. 5,000/-

- (ii) Duty leviable of transaction value = 2000/-

In view of above, Cenvat credit equal to amount of Rs. 5000/- is to be reversed by BSNL.

**3. REVERSAL OF CENVAT CREDIT ON SALE OF CPE'S**

- Currently, BSNL is paying VAT on sale of CPE's which are sold under the outright purchase plan opted by the subscriber of the Broadband internet/Landline Services. The said activity would amount to 'trading of goods'.



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- ▶ The said activity of 'trading of goods' is covered under the negative list of services under Section 66D of the Act.

Further, 'exempted service' as defined under Rule 2(e) of Cenvat Credit Rules, 2004 includes services covered under the negative list of services. Thus trading of goods qualifies as exempted service within the meaning provided under Cenvat Credit Rules, 2004.

- ▶ Rule 6(3) of the Cenvat Credit Rules, 2004 provides that when taxable as well as exempted services are provided by a service provider, there is a requirement to reverse the Cenvat credit on the inputs/input services used in the provision of exempted services.

Thus, BSNL would be required to pay an amount proportionate to inputs/input services used for provision of such exempted services, subject to Rule 6(3) of Cenvat Credit Rules, 2004.

#### **4. SERVICE TAX IMPLICATION ON 'LIQUIDATED DAMAGES' RECOVERED FROM VENDOR CONTRACTORS**

- ▶ The liquidated damages received by BSNL constitute consideration in exchange of BSNL bearing the delay on the part of the contractor and such liquidated damages are being recognized by BSNL as 'income' in its books of accounts.
- ▶ Section 66E of the Finance Act, 1994 Act provides a list of services, known as 'declared services', with the purpose of clarifying the taxability of certain activities/services. Clause (e) of the said Section provides that "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" shall constitute a declared service.

In the instant case, it can be said that BSNL agrees to 'tolerate the act' of deficient provision of service by the contractor (delay in delivering the service). Such act is explicitly covered in the declared list of services cited above, and hence **BSNL would be liable to deposit Service tax on such liquidated damages recovered from the vendor contractors.**

#### **5. SERVICE TAX IMPLICATION ON USO SUBSIDY RECEIVED FROM GOVERNMENT**

- ▶ BSNL receives USO subsidy from the Government for setting up the active or passive telecom infrastructure in rural areas.



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- ▶ Vide Budget 2012, the term 'Service' has been defined u/s 65B (44) of the Finance Act, 1994. A service is any activity carried out by one person for another, in exchange of a consideration. BSNL is receiving subsidy from the Government in exchange of setting up infrastructure in rural areas. Accordingly, the above qualifies as a service.

Further, since this service is provided within the taxable territory, it would attract the levy of Service tax under Section 66B, amounting to a taxable service. However, this would be subject to the provisions of Section 67 which provides the value of taxable service, and the Valuation Rules.

- ▶ In this regard, it would be pertinent to note that vide Budget 2012, Rule 6(2) of the Valuation Rules which provides the exclusions while determining the value of taxable service, has been amended to include the following entry:

"Subsidies and grants disbursed by the Government, not directly affecting the value of service"

- ▶ Even though the above explained arrangement wherein BSNL receives subsidy, qualifies the meaning of a 'service' as defined under the Act, however, there would arise no Service tax implication.
- ▶ **BSNL would not be required to pay Service tax on the subsidy amount received from the Government, as the entire value of the subsidy would be excluded while determining value of taxable service.** However, this would be subject to the fact that the subsidy received from the Government does not affect the value of services provided by BSNL.

#### **6. EXEMPTED SERVICES EXCLUDE EXPORT OF SERVICES UNDER RULE 6A OF SERVICE TAX RULES, 1994**

- ▶ The definition of exempted services provided under Cenvat Credit Rules, 2004 specifically excludes 'export of service' in accordance with Rule 6A of Service Tax Rules, 1994. Accordingly, export of service does not amount to an 'exempted service'.

However, it is pertinent to note that Rule 6(8) of Cenvat Credit Rules, 2004 states that export of service would be considered as an exempted service in a case where the consideration is not received within the RBI prescribed time limit. The relevant text of the Rule is reproduced below for ease of reference:

"For the purpose of this rule, a service provided or agreed to be provided shall not be an exempted service when:-

- (a) The service satisfies the conditions specified under Rule 6A of the Service Tax Rules, 1994 and the payment for the service is to be received in convertible foreign exchange currency; and

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(b)Such payment has not been received for a period of six months or such extended period as may be allowed from time-to-time by Reserve Bank of India, from the date of provision.”

- ▶ Therefore, in case where consideration for export of International In-roaming (IIR)/ International Private Lease Circuits (IPLC) or Multi Protocol Label Switching (MPLS)/Interconnection usage charges (IUC)/International long Distance (ILD) services is not received by BSNL within the time limit prescribed under the above mentioned Rule 6A of the Service Tax Rules, 1994, BSNL would be required to reverse the Cenvat credit in terms of Rule 6(3) of Cenvat Credit Rules, 2004.

#### **7. RATE OF EXCHANGE FOR EXPORT AND IMPORT OF SERVICE**

- ▶ Vide Budget 2012, Section 67A has been inserted in the Finance Act, 1994. The said section, among others, provides that the rate of exchange shall be the rate in force or as applicable at the time when the taxable service is provided/ agreed to be provided.

Accordingly, the rate of exchange existing at the time of provision of service is to be considered for the purpose of converting the consideration for export/ import of service from foreign currency in INR.

- ▶ For this purpose, the rate of exchange notified by the Customs Act is to be considered. This is because the explanation to Section 67A provides that the rate of exchange means the rate of exchange as referred in Explanation to Section 14 of the Customs Act.
- ▶ Thus, while making payment on procurement of imported services, and for purpose of recording export service value (in returns etc), BSNL would be required to apply the Customs notified rate of exchange.

#### **8. MISCELLANEOUS BUDGET CHANGES**

- ▶ The amount to be paid under Rule 6(3) of Cenvat Credit Rules, 2004 i.e. reversal of Cenvat Credit on account of provision of exempted activities has been increased from 5% to 6%.
- ▶ Retrospective amendment to Rule 6(6A) of Cenvat Credit Rules, 2004: A service provider providing services to a SEZ unit/ developer need not pay an amount (reversal of credit) under Rule 6(3) of Cenvat Credit Rules, 2004. This is with retrospective effect from 10 February 2006.

However, the Budget does not address the scenario where companies have already reversed the amounts under Rule 6(3) on account of provision of services to SEZ units/ developers.

- ▶ **The time limit for filing of appeal with the Commissioner (Appeals) has been reduced from 3 months to 2 months, for all orders passed on or after 28 May 2012.**

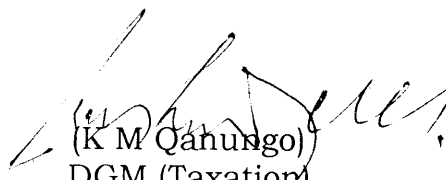
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- ▶ The limitation period of 1 year for issuance of notice has been extended to 18 months.
- ▶ Introduction of provisions relating to special audit in the Service tax law on similar lines as Central Excise Act.
- ▶ Settlement Commission provisions made applicable to Service tax in line with provisions existing under the Central Excise Act.
- ▶ Dispute about refund/rebate in case of export of service will be referred to the Revision Authority instead of Tribunal.

In view of above, it is requested to kindly go through the above clarifications and contents of the same may be brought to the notice of all concerned for taking necessary action.

This issues with the approval of GM (Taxation), BSNL CO.

  
(K M Qanungo)  
DGM (Taxation)  
BSNL C.O.