

Analysis of NN 16/2012 ST dated 29.05.2012 [Service Tax (Settlement of Cases) Rules, 2012]

Relevant Extract of D.O. F. No 334/1/2012-TRU New Delhi, dated 16th March, 2012.

“Provisions relating to Settlement Commission are being brought in the Service Tax by adding sections 31, 32 and 32A to 32P of the Central Excise Act in section 83. On the date of the enactment of the Finance Bill (i.e., 28.05.2012), notification containing Service Tax (Settlement of Cases) Rules, 2012 along the lines of Central Excise (Settlement of Cases) Rules, 2007, will come into effect. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.”

Clause 143(M) of Finance Act, 2012 amended section 83 of Finance Act, 1994 to make Settlement Commission provisions given in sections 31, 32, 32A to 32P of the Central Excise Act, 1944, applicable to service tax cases.

These sections of excise provide following provisions and same shall be applicable for settlement of case of service tax through settlement commission:

S. No.	Section	Description
1	SECTION 31	Definitions
2	SECTION 32.	Customs and Central Excise Settlement Commission.
3	SECTION 32A.	Jurisdiction and powers of Settlement Commission.
4	SECTION 32B.	Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.
5	SECTION 32C.	Power of Chairman to transfer cases from one Bench to another.
6	SECTION 32D.	Decision to be by majority.
7	SECTION 32E.	Application for settlement of cases.
8	SECTION 32F.	Procedure on receipt of an application under section 32E.

9	SECTION 32G.	Power of Settlement Commission to order provisional attachment to protect revenue.
10	SECTION 32H.	Power of Settlement Commission to reopen completed proceedings.
11	SECTION 32-I.	Powers and procedure of Settlement Commissions.
12	SECTION 32J.	Inspection, etc. of reports.
13	SECTION 32K.	Power of Settlement Commission to grant immunity from prosecution and penalty.
14	SECTION 32L.	Power of Settlement Commission to send a case back to the Central Excise Officer.
15	SECTION 32M.	Order of settlement to be conclusive.
16	SECTION 32N.	Recovery of sums due under order of settlement.
17	SECTION 32O.	Bar on subsequent application for settlement in certain cases.
18	SECTION 32P.	Proceedings before Settlement Commission to be judicial proceedings.

Sections given in above table, provides provision as to when application can be made to settlement commission, how settlement commission will proceed on receipt of same, power of Settlement Commission to order provisional attachment to protect revenue, discretion of Settlement Commission to allow to inspect etc. of any reports made by any Central Excise Officer to the Settlement Commission on payment of the prescribed fee etc.

NN 16/2012 ST dated 29.05.2012 makes the Service Tax (Settlement of Cases) Rules, 2012 and these rules provide provision in respect of following:

1. Form and manner of Application;
2. Disclosure of information in the application for settlement of cases;
3. Manner of provisional attachment of property and;
4. Fee for copies of reports;

Please find the said notification for detail in annexure. I hope above analysis is useful for you.

(Disclaimer: The above analysis has been drafted as per various provisions of Finance Act 1994, and notifications and circulars issued thereunder. The analysis may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this reply. We shall not be responsible for any loss caused based on this interpretation.)

With Warm Regards,

CA. Puneet Goyal

ACA, ACS, B.Com (Hons.)

Co-Moderator (Indirect Tax)

Voice of CA

Email id: capuneetgoyal.delhi@gmail.com

Contact Number: 9211274295, 9711988362

ANNEXURE

Notification No. 16/2012 ST Dated 29th May, 2012

In exercise of the powers conferred by clause (j) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as "the Act"), read with sections 31, 32 and 32A to 32P of the Central Excise Act, 1944 (1 of 1944) made applicable to service tax vide section 83 of the Act, 1994, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. - (1) These rules may be called the Service Tax (Settlement of Cases) Rules, 2012.

(2) They shall come into force on the date of publication in the Official Gazette.

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

(a) "Act" means Chapter V of the Finance Act, 1994 (32 of 1994);

(b) "Excise Act" means the Central Excise Act, 1944 (1 of 1944);

(c) "Form SC(ST)-1" means the form appended to these rules;

(d) "section" means a section of the Act ;

(e) words and expressions used herein and not defined but defined in the Act or Excise Act, shall have the respective meanings assigned to them in those Acts.

3. Form and manner of Application. - (1) An application under sub-section (1) of section 32E of Excise Act, made applicable to service tax vide section 83 of the Act, shall be made in the Form SC(ST)-1.

(2) The application referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed,-

(a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the *Karta* of such family and, where the *Karta* is absent from India or is mentally incapacitated from attending to his affairs, by the senior most adult member of the family available;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or some person competent to act on his behalf.

(3) Every application in the Form SC(ST)-1 shall be filed in quintuplicate and shall be accompanied by a fee of one thousand rupees.

(4) The additional amount of service tax accepted by the applicant along with interest due thereon, shall be deposited by him in any of the authorised bank under TR-6, referred to in the Service Tax Rules, 1994 (hereinafter referred to as TR-6 Challan) in quintuplicate, or G.A.R.-7 and shall be disclosed by him in the Form.

4. Disclosure of information in the application for settlement of cases. - The Settlement Commission shall, while calling for a report from the Commissioner of Central Excise having jurisdiction or Commissioner of Service Tax having jurisdiction, under sub-section (3) of section 32F of Excise Act, made applicable to service tax vide section 83 of the Act, forward a copy of the application referred to in sub-rule (1) of rule 3 along with the annexure to the application and the statements and other documents accompanying such annexure.

5. Manner of provisional attachment of property. - (1) Where the Settlement Commission orders attachment of property under sub-section (1) of section 32G of Excise Act, made applicable to service tax vide section 83 of the Act, it shall send a copy of such order to the Commissioner of Central Excise or Commissioner of Service Tax having jurisdiction over the place in which the applicant owns any movable or immovable property or resides or carries on his business or has his bank account.

(2) On receipt of the order referred to in sub-rule (1), the Commissioner may authorise any officer subordinate to him and not below the rank of an Assistant Commissioner of Central Excise or Service Tax to take steps to attach such property of the applicant.

(3) The officer authorised under sub-rule (2) shall prepare an inventory of the property attached and specify in it, in the case of the immovable property, the description of such property sufficient to identify it and in case of the movable property, the place where such property is lodged or kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached.

(4) The officer authorised under sub-rule (2) shall send a copy of the inventory so prepared each to the Commissioner of Central Excise and the Settlement Commission.

6. Fee for copies of reports. – Any person who makes an application under section 32J of Excise Act, made applicable to service tax vide section 83 of the Act, for obtaining copies of reports made by any Central Excise Officer, shall pay a fee of five rupees per page of each report or part thereof.

Form No. SC(ST)-1

[See rule 3 of the Service Tax (Settlement of Cases) Rules, 2012]

Before the Customs and Central Excise Settlement Commission

_____ **Bench at** _____

Form of application for settlement of a case under section 32E of Excise Act made applicable to service tax vide section 83 of the Finance Act, 1994 (32 of 1994)

1.	Full name of the applicant:
2.	(i) Postal address of the applicant
	(ii) E- mail address of the applicant, if any

3.	(i) Address for communication: (ii) Telephone No.
4.	(i) Permanent Account No: (ii) Service Tax registration No: (iii) Status: (<i>See note 2</i>)
5.	(i) Commissioner of Central Excise/Service Tax having jurisdiction over the applicant: (ii) Postal address of the Commissioner of Central Excise/Service Tax having jurisdiction over the applicant:
6.	Details of Show Cause Notice issued to the applicant (a) Show Cause Notice No and date (b) Period of dispute in the notice (c) Service tax demanded in the notice (in Rs.) (d) Dispute in connection with which the application for settlement is made. (e) Adjudicating authority before whom the notice is pending adjudication.
7.	(i) Whether service tax returns were filed for the period of dispute: (ii) Whether the invoices on taxable services are duly entered in the books of accounts. If so, details thereof. Note : Self-attested copies of relevant service tax returns and extracts from books of accounts/register to be enclosed.
8.	Brief facts of the case and particulars of the issues to be settled and terms of settlement sought by the applicant:
9.	(a) Amount of service tax accepted as payable for settlement (in Rs) (b) Interest on the said admitted service tax (in Rs.): (Detailed calculations of (a) and (b) above to be enclosed as Annexure-I)
10.	Payment details of the service tax accepted, by the applicant, along with interest as at (9) above (TR-6 challan or G.A.R.-7 number and date) (Details to be enclosed as Annexure-II)
11.	Whether any application for settlement (other than the present one) has been filed by the applicant before any Bench of Settlement Commission. If yes, the following information may be provided : (a) Application No. and date

	<p>(b) Amount admitted for settlement</p> <p>(c) Show cause notice No. and date</p> <p>(d) Status of the application, if decided, then details of the final order of the Commission:</p> <p>(i) Settlement order No. and date</p> <p>(ii) Details of deposit of settlement amount</p> <p>(iii) Whether settlement amount has been paid in terms of the order</p> <p>(e) If any application of the applicant was sent back/rejected by the Settlement Commission, the reference number and date of the order</p> <p>(f) Reference number and date of the order, if any, in case the applicant was convicted of any offence under Chapter V of the Act in relation to a case settled earlier by the Settlement Commission</p>
12.	<p>(i) Details of the order, if the applicant was ever debarred from making further application for settlement under section 32-O of Excise Act made applicable to Service Tax vide section 83 of the Act, by any of the Benches of the Settlement Commission</p> <p>(ii) Details of the order, if any settlement in respect of the applicant has ever been made void under section 32L of Excise Act made applicable to Service Tax vide section 83 of the Act, by any of the Benches of the Settlement Commission</p>

Signature of the applicant

Verification

I.....son/daughter/wife of residing at..... do solemnly declare that I am making this application in my capacity as.....and I am competent to verify it.

That the contents of this application are true and that I have not filed any application for settlement in contravention of the provisions of the Chapter V of Excise Act made applicable to service tax vide section 83 of the Act, before the Settlement Commission and also that no information relevant to the facts of the case has been suppressed. Annexures of the documents accompanying the application are true copies of the originals and the tables showing financial transaction are correct and are duly attested by me.

That no proceeding in respect of the case for which settlement is being sought, is pending before Commissioner (Appeal), Customs, Excise and Service Tax Appellate Tribunal or the courts, as the case may be, or has been remanded back to the adjudicating authority by the said appellate authorities.

Verified today the.....day of.....(mention the month and year) at(mention the place)

Deponent

Note:

1. The application fee should be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of Reserve Bank of India and the triplicate copy of the challan sent to the Settlement Commission with the application. The Settlement Commission will not accept cheques, drafts, hundies or other negotiable instruments.
2. Please state whether individual, Hindu undivided family, company, firm, an association of persons, etc.
3. Details of the additional amount of Service Tax accepted as payable and interest thereon referred to in item 9 of the application shall be furnished in annexure to this application.
4. Original copy of the of the TR-6 challan indicating amount of service tax accepted as payable for settlement and interest thereon referred to in item 9 be retained by the applicant, duplicate be endorsed to the Central Excise Officer having jurisdiction over the applicant, triplicate be endorsed to the jurisdictional Chief Accounts Officer of the Central Excise or Service Tax Commissionerate as the case may be, quadruplicate be retained by the bank and quintuplicate copy be enclosed with this application form. In the case of G.A.R.-7, photocopies of tax payer's counterfoil, attested by the jurisdictional Central Excise Officer, may be furnished to various authorities.

Annexure

Statement containing particulars, referred to in item 8 of the application, made under section 32E (1) of Excise Act made applicable to service tax vide section 83 of the Act.

1. Details of information which has not been correctly declared in the periodical return;
2. Service tax liability accepted out of the total service tax demanded in the show cause notice issued and the manner in which such service tax liability has been derived;
3. Full and true disclosure of the facts regarding the issues to be settled including the terms of settlement sought for by the applicant.

Signature of the applicant

Place

Date

(Raj Kumar Digvijay)
Under Secretary to the Government of India