



January 11, 2020

The Chairman

Central Board of Indirect Taxes and Customs (CBIC)
North Block
New Delhi.

Respected Sir,

Sub: Request to stay the Service Tax Audit process for the period upto June 2017 (before GST regime)

Greetings from Gujarat Chamber of Commerce and Industry (GCCCI).

- (1) We have received representations from our Regional Chambers, including the Jamnagar Chamber of Commerce and Industry, that the GST Audit Department, Office of the Commissioner of CGST have issued letters to the trade and industries for submitting the document/information and data for conducting service tax audit under EA-2000 for the period upto June 2017.
- (2) We would like to request and put forward our contention based on below mentioned three ground:
 - a. In erstwhile service tax law, the power to conduct the Audit by the departmental officer had been given in Rule 5A of Service Tax Rules, 1994. However, the Hon'ble Delhi High Court in the case of Travelite (India) vs. Union of India & ors. [W.P. (C) 3774/2013, C. M. No. 7065/2013] and in case of Mega Cabs Pvt. Ltd. Vs. Union of India and Ors [2016-TIOL-1061-HC-DEL-ST] declared Rule 5A of Service Tax Rules as ultra vires the Finance Act and therefore, struck down to that extent.
 - b. Further, after introduction of GST Law, Chapter V of Finance Act, 1994 is omitted and as per Section 174 (2) of Central Goods and Services Tax Act, 2017 (CGST) which deals with Repeals and Saving will not apply to Rule 5A of Service Tax Rules, 1994. Hon'ble Gujarat High Court in the case of M/s. OWS Warehouse Services LLP (Special Civil Application no. 16226 of 2018) held that Section 174 of the CGST Act, 2017 and the saving clause contained therein would not save Rule 5A of the Service Tax Rules, 1994 so as to enable the department to initiate fresh proceeding for audit under the said rule.

Durgesh V. Buch
President

Natubhai Patel
Sr. Vice President

Bhargav Thakkar
Vice President

Sanjeev Chhajer
Secretary

Dilip M. Padhya
Secretary (R)

Pathik S. Patwari
Treasurer



- (3) Further, we would like to submit that that random assessments and audit by the department is done by the department in the interest of the genuine taxpayers. It has been normally observed that around 2% of cases are selected randomly for audit and notices are issued in cases where there is a mismatch or probability of tax evasion. However, it has been recently observed especially in the smaller towns and cities of Gujarat, that the rate of cases taken up for service tax audit is very high, much beyond the reasonable level of around 2%. This is resulting in undue harassment to the small taxpayers in these regions.
- (4) Further, your good selves will appreciate the fact that the "Sab Ka Vishwas Legacy Dispute Resolution Scheme (SVLDRS) has been announced and is operational for the taxpayers with an objective to resolve the pending disputes and litigations in respect of the rescinded laws such as Service Tax. However, if the department conducts audit and raises any demand, then such cases are not allowed to take benefit under the scheme, thereby preventing those who are willing to voluntarily declare their pending dues to benefit from the scheme.

Sir, we earnestly request you to kindly look into the matter and take a favourable decision to stay the service tax audit in the larger interest of trade and industry of Gujarat.

We look forward to your positive intervention in the matter.

With Regards,

Sincerely,

Durgesh Buch
President

Encl: Representation received from Jamnagar Chamber of Commerce and Industry

C.C. to: 1. Principal Chief Commissioner of CGST, Gujarat
2. Jamnagar Chamber of Commerce and Industry