

Practical Difficulties in Filing Service Tax Returns

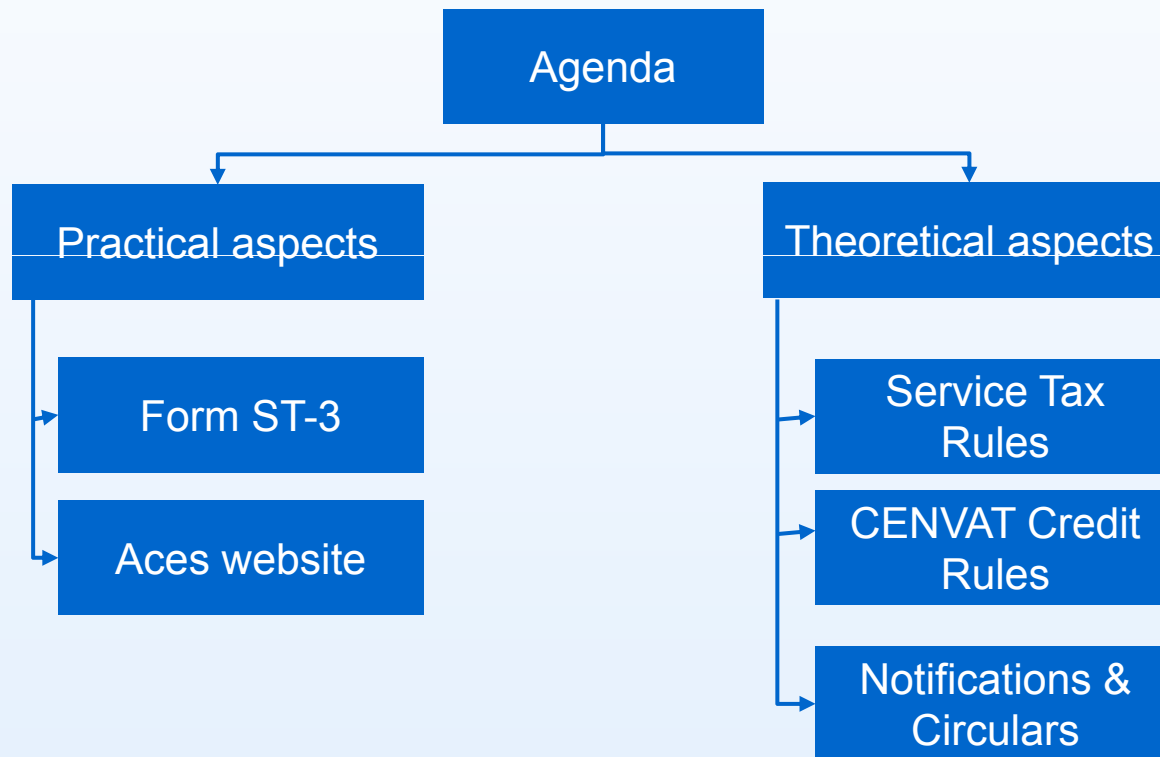
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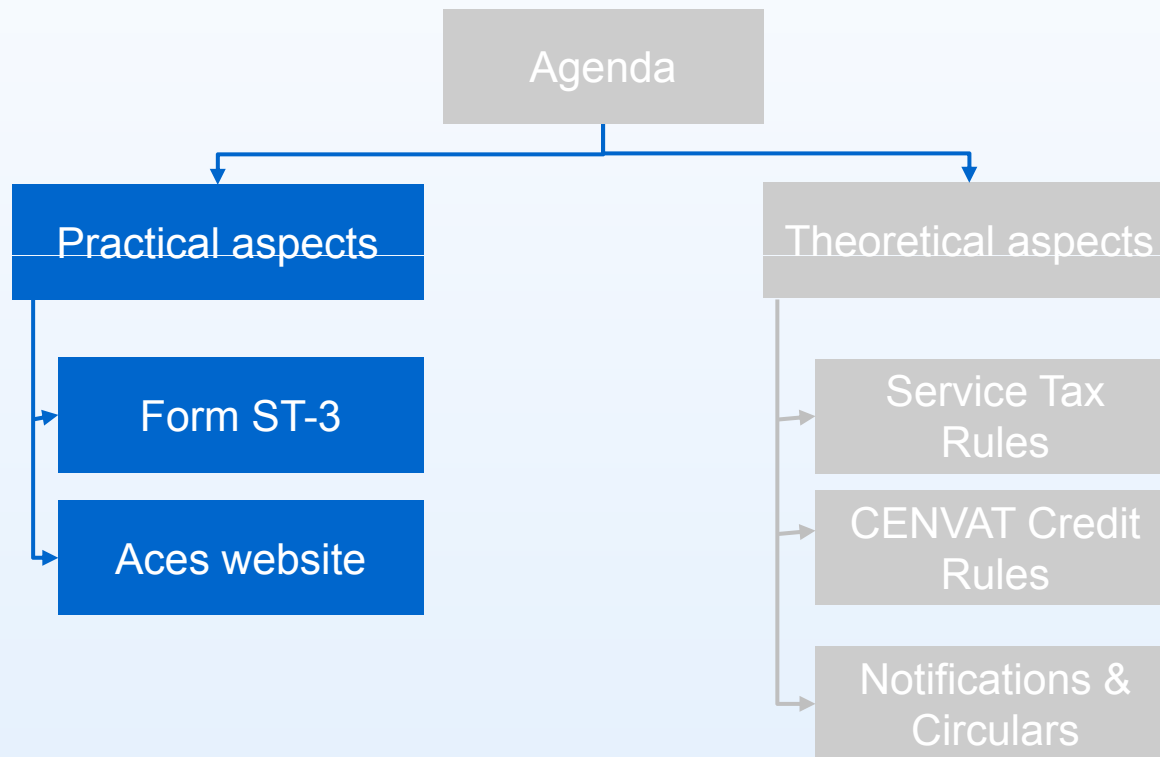
CA. Yash Parmar

S. B. Gabhawalla & Co.



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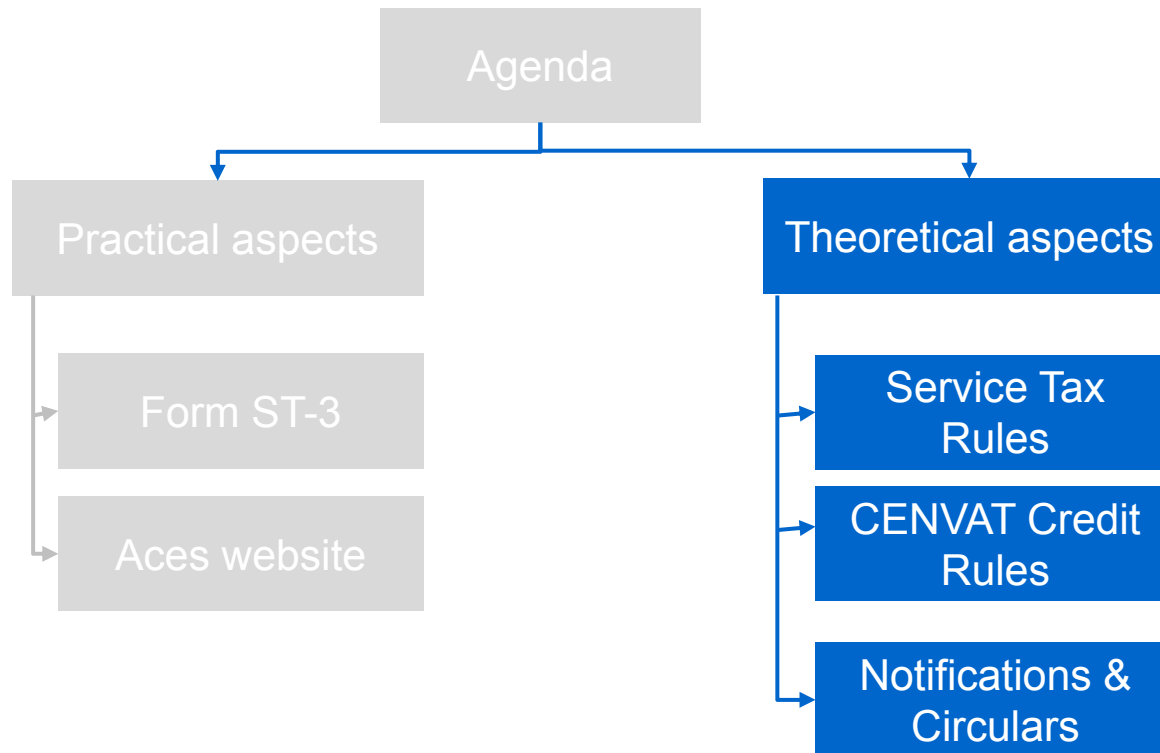
Form ST-3 : Online vs. Offline mode

Online mode

- CIN is verified on the spot from the database
 - On the spot verification reduces risk of rejection
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- “Save” option available only at the end of the online Return
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- Page number not available making it difficult to verify if anything is missed out
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- Direct access to any particular page not available, hence whole Return has to be scrolled for editing
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- Form cannot be saved for future reference
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Offline mode

- CIN is verified from database only after uploading XML file
 - Chances of rejection are high if CIN is incorrect
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- File can be saved at any point of time
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- No such difficulty as form is divided into different sheets
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- Direct access to any information is available
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- Form can be saved and accessed at any point of time
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Theoretical Aspects: Situation 1

Situation

Mr. A has uploaded his service tax return using Excel Utility on 25-04-2015. Due to minor error, system has rejected this return on 26-04-2015. Is Mr. A required to pay Late Filing Fees?

Solution

“In case a return is “rejected ” by the application, the date of uploading of the rejected return will not be considered as the date of filing, rather the date of uploading of the successfully “filed”, return (after the assessee carries out necessary corrections and uploads it again) will be considered as the actual date of filing.”

- Circular No. 956/17/2011-CX Dated 28-09-2011

Theoretical Aspects: Situation 2

Situation

Does one need to file physical copy of ST-3 return after filing the same online through the website www.ACES.gov.in?

Solution

“wherever the return is submitted through ACES there will not be any requirement to submit signed hard copy separately.”

-Para V of Circular No. 956/17/2011-CX Dated 28-09-2011

Theoretical Aspects: Situation 3

Situation

Mr. A has obtained service tax registration but has neither provided any taxable service nor received any amount towards taxable service during the period. Is he required to file ST-3 return?

Solution

- Ideally, only a person required to pay service tax is supposed to file ST-3. However, to avoid litigation in future it is advisable to file the return.
- Further, in Amrapali Barter case Hon'ble Kolkata Tribunal has held that the service provider is not required to file the nil return as per the CBEC Circular No 97/8/07-ST dated August 23, 2007.

Theoretical Aspects: Situation 4

Situation

Mr. A, CA has obtained service tax registration, has provided taxable services and received amount towards taxable services during the period 2014-15. However, Mr. A has availed threshold exemption limit of Rs. 10 lakhs as provided under notification 33/2012- ST. Is he required to file ST return?

Solution

- “Person liable to pay service tax” is required to furnish the return. [Section 70 read with Rule 7 of ST Rules.]
- However, to avoid undue litigation in future, it is highly advisable to file the return.

Theoretical Aspects: Situation 5

Situation

What are the consequences of late filing of Service Tax return?

Solution

- Late filing fees upto Rs. 20,000/- under Rule 7C of Service Tax Rules, 1994 read with Section 70
- High probability of issuance of Show Cause Notice

Theoretical Aspects: Situation 6

Situation

What are the consequences of not filing Service Tax return?

Solution

- Issuance of Show Cause Notice
- Best Judgement assessment u/s. 72
- Penalty of Rs. 10,000/- u/s. 77(2)

Theoretical Aspects: Situation 7

Situation

Is it compulsory to pay late filing fees before uploading the delayed return?

Solution

- Return may get uploaded even without payment of late filing fees.
- There is also a declaration on distribution sheet which requires the assessee to confirm whether the late filing fee, if any has been paid or not.

Theoretical Aspects: Situation 8

Situation

Mr. A having Service Tax registration did not file the return, turnover being Nil. However, he received letter from Superintendent seeking reasons for not filing the returns. Now, Mr. A wants to file his returns and is seeking your opinion as to whether he is required to pay late filing fees?

Solution

- Ideally an assessee having Service Tax Registration should file ST-3 even in case of Nil or non-provision of service, to avoid undue litigation.
- As discussed supra that an assessee is not required to file Nil return as per the circular.
- Hon'ble Kolkata Tribunal in the case of Amrapali has held that in case the Service Provider files the nil return after considerable delay, then also no penalty under Section 77 of Finance Act or fees under Rule 7C of the STR imposable on him

Theoretical Aspects: Situation 9

Situation

Mr. A has made some errors in filing his service tax return? How can he rectify the same?

Solution

Mr. A can rectify his mistake by filing revised return within the period of 90 days from the date of filing original return.

Theoretical Aspects: Situation 10

Situation

Mr. A has filed his original return after the due date. Can he revise the same?

Solution

- Yes. Mr. A can revise the return filed after due date.
- The same can be revised within the period of 90 days of filing the belated return.

Theoretical Aspects: Situation 11

Situation

Mr. A found the mistake in his service tax return after 90 days of filing the original return. Can he revise the same? If no than what remedy does he have?

Solution

- Return cannot be revised after 90 days. Aces website does not accept the same.
- He can write a letter to superintendent disclosing the mistake or omission in the return or if he has skipped to show liability, then the same can be shown as arrears in next periods return.

Theoretical Aspects: Situation 12

Situation

Mr. A found a mistake in his return which he rectified by revising the return. Now again he wants to revise his return. Can he do so?

Solution

Legal Provisions

- There are no restrictions in the provisions for number of times the return can be revised

Practical Scenario

- Aces website does not accept revised return for the second time once it is revised.

Thank You