# ***Analysis of Finance Bill-2013 for Service Tax***

***By CA. Nishant Saluja***

*Budget 2013-14 has been introduced by Mr. P. Chidambaram, Finance Minister. Budget has come at a time where it has been almost one year in introduction of negative list based service tax and other tax reforms in form of DTC, GST may still take substantial time in their effective implementation. Through this Article the author has tried to provide quick insight to changes proposed in Budget in respect of Service Tax.*

## ***A. Amendments in Finance Act, 1994. (on enactment of Finance Bill, 2013)***

### ***I. Definitions- Sec 65B:***

***(i)*** *The scope of 'approved vocational education course' as defined under Section 65B(11) is being amended to*

- *include courses run by an industrial training institute or an industrial training centre affiliated to State Council for Vocational Training (National Council already covered).*

- *to delete courses run by an institute affiliated to the National Skill Development Corporation because NSDC is not an affiliating body.*

*Comments: By way of this amendment, courses affiliated by SCVT will also enjoy exemption under negative list.*

*(ii) The definition of "process amounting to manufacture or production" in section 65B(40) is being expanded to include processes under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.*

*Comments: This was a well needed change since excise duty is also leviable on manufacture of products specified in the schedule to Medicinal and Toilet Preparation (Excise Duties) Act, 1955. This will avoid unnecessary litigation.*

***II. Section 66BA***

*To give legislative effect to the explanation contained in Removal of Difficulty Order 2012, new section has been introduced to provide that any reference to Section 66 (Charging Section in positive List) in this Act or any other act will be construed as reference to Section 66B (charging section in negative list). It has also been provided that negative list based taxation has deemed to have come into effect w.e.f. 01.07.2012.*

***III. Negative List- Seed Testing***

*The word, 'seed' is being omitted from the expression 'seed testing' mentioned in Section 66D (d)(i). As a result, testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes will be covered by the negative list.*

***IV. Section 73(2A)-Issue of SCN***

*A new Sub-section (as existing in Central Excise law) has been introduced to provide*

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*that if any Show Cause Notice which seeks invocation of extended period (more than 18 months) is not found sustainable by Appellate Authority, Tribunal or Court on charges of fraud, collusion........etc. the same shall be deemed to be a SCN issued for normal period of 18 months***.**

***V. Penalty under Section 77-Failure to take registration***

*At present penalty under Section 77(a) for failure in taking registration is levied at higher of*

***(i)*** *upto Rs. 10000/-,*

***OR***

***(ii)*** *Rs. 200/- for every day of default*

*An amendment is proposed to restrict the maximum penalty upto to Rs. 10000/- only.*

***VI. Penalty on Directors, officers etc. (Section 78A)***

*For the first time in Service tax law, provision for penalty on directors, manager, secretary or officer upto a maximum of Rs. 1 Lac, has been introduced under new Section 78A for any of the following contraventions:*

- *Evasion of service tax,*
- *issuance of invoice without provision of service,*

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· *availment of Cenvat credit without receipt of services or goods, or*

· *service tax collected remaining overdue for more than 6 months*

***Comments: It appears that the Government is determined increase the compliance of timely and correct payment service tax.***

***VII. Filing of Appeal or Cross Objections after expiry period***

*A suitable amendment is being made under Section 86(5) to provide that appeal or Cross objections filed by Assessee beyond expiry period may be admitted by CESTAT. At present this facility is available only in case of Department Appeals.*

***VIII. Offences & Penalties-Section 89, 90 & 91***

***(i)****New provisions are being introduced to prescribe revised punishments for offences in section 89.*

***(ii)*** *Section 90 is being introduced to make certain offences cognizable and others non-cognizable and bailable.*

***(iii)****Section 91 is being introduced to empower Commissioner of Central Excise to authorize Central Excise officer (not below Superintendent) to arrest a person for specified offences.*

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***Comments:***

***IX. Retrospective Exemption to Indian Railways***

***Retrospective exemption is being extended to the Indian*** *As per TRU letter of CBEC dated 28.02.2013, the Policy wing of the Board will be issuing detailed instructions in due course.*

*Railways under proposed Section 99 on the service tax leviable on various taxable services provided by them during the period prior 01.07.2012 to the extent show cause notices have been issued upto the 28.02.2013.*

***B. Changes in Mega Exemption Notification No. 25/2012 (w.e.f 01.04.2013)***

***I.*** *Services provided by Educational Institution*

*Exemption available under Sr. No. 9 in respect of services provided by Educational Institution by way of following has been withdrawn:*

- ***Auxiliary Educational Services***
- ***Renting of Immovable property***

***II. Temporary transfer of Cinematograph films restricted to Theatres***

*At present Sr. No. 15 exempts exhibition of all types of cinematograph films. Now the*

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*same has been restricted to exhibition in a cinema hall or cinema theatre. Hence, any other mode of exhibition such as TV/DTH shall be subject to service tax.*

### *III. All Air Conditioned Restaurants under service tax net.*

*At present under Sr. No. 19 only those services in relation to serving of food or beverage are taxable which have facility of AC and license to service liquor. Now the condition of liquor license has been done away with. Hence, all restaurants which are air conditioned at any time during the year are under service tax net.*

***Comments:*** *This will further increase the cost of food, since having an AC in restaurant is very common thing and further the restaurants are also subject to State VAT on full value.*

### *IV. Withdrawal of exemption on transport of certain goods by rail or vessel*

*The Government has withdrawn exemption on transportation of following goods by rail or vessel:*

- *Specified Petroleum and petroleum products*
- *Postal mail or mail bags*
- *Household effects*

### *V. Exemption to additional items in respect of GTA service*

*Scope of exemption at Sr. No. 21 in respect of transport of goods by road has been expanded to include transportation of flours, tea, coffee, sugar, salt & edible oil, chemical fertilizers, newspapers, defence equipments, relief material materials for victims etc. also under exemption list.*

### *VI. Exemption for Vehicle parking to General Public no longer available*

*At present Entry No.24 exempts services by way of vehicle parking to general public. The same has now been omitted. Thus, all parkings at public places are subject to service tax.*

### *VII. Repair or Maintenance of Aircraft to Government etc.*

*The exemption at Sr. No. 25 in respect of service of repair or maintenance of aircraft provided to Governments, Local Authority or a Governmental Authority has been withdrawn.*

### *VIII. Advancement of any other object of general public utility*

*The definition of "charitable activities" is being changed by deleting the portion listed in sub-clause (v) of clause (k). Thus the benefit to charities providing services for advancement of "any other object of general public utility" up to Rs 25 Lakh will not be available. However the threshold exemption will continue to be available up to Rs 10 lakh.*

### *C. Abatement-Construction of Complex Service (w.e.f. 01.03.2013)*

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*The abatement of 75% is available under S. No 12 of Notification No. 26/2012-ST dated 20.06.2012 for 'construction of a complex, building, civil structures etc'. on condition of non-availment of Cenvat Credit on input and inclusion of value of land for calculating Service tax amount. By way of Notification No. 2/2013 dated 01.03.2013, The abatement rates have been revised as under:*

| ***Particulars*** | ***Revised Rate of Abatement*** |
|---|---|
| *For residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore* | *75%* |
| *In any other case* | *70%* |

***Comments:****Thus, if both of below conditions are fulfilled, service tax shall be levied at 3.708% (30% of 12.36%), otherwise at 3.09%.*

***(i)*** *Carpet Area > 2000 Square feet and*

***(ii)*** *Amount charged >= Rs. 1 Crores*

*This is an unusual amendment and seeks to levy higher rate of tax on richer section of society. This amendment shall apply w.e.f. 01.03.2013.*

***D.*** *Amnesty Scheme for Service Tax Payers. (on enactment of Finance Bill, 2013)*

*To increase compliance and encourage assessee to voluntarily pay service tax and file* *returns on timely basis, the Government has come up with Voluntary Compliance Encouragement Scheme, 2013 with following key features:*

***i.*** *The scheme can be availed of by non-filers or stop-filers or persons who have not made a truthful declaration in their return. However it will not be applicable to persons against whom any inquiry or investigation is pending by the issue of search warrant or summon or by way of audit;*

***ii.*** *The defaulter will be required to make a truthful declaration of all his pending tax dues (from 01.10.2007 to 31.12.2012) and pay at least half of that before 31.12.2013; remaining half to be paid by:*

***(a)*** *30.06.2014 without interest;* ***<u>or</u>***

***(b)*** *By 31.12.2014 with interest from 01.07.2014 onwards;*

***iii.*** *On compliance with all the requirements the person will have immunity from interest (as specified), penalties and other proceedings;*

***Comments:*** *This is indeed an appreciable step taken by FM in a country where out of 17 Lakh registered assesses only 7 Lakh file returns regularly (Budget Speech). This will encourage genuine assessees to come forward admit their tax dues without payment of any interest and penalty. TRU letter has clarified that tax-payers will need to settle their dues for the period after 31.12.2012 under the present law.*

***E.*** *Benefit of Advance Ruling extended to specified residents (on Enactment of Finance Bill, 2013)*

*The benefit of Advance Ruling Authority is being extended to resident public limited* *companies.*

### *F. Conclusion*

*This Budget has not witnessed any notable changes in service tax laws which were expected by assessees, practitioners, associations etc. Certain practical issues still remains unaddressed. In any case it was more of a balanced budget.*

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