Recent Changes in Service Tax Interest, Pre-Deposit, POT and Mega Exemption List

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Major Changes in Union Budget 2014

Offences - Imprisonment

- **S.89(1)Whoever commits any of the following offences:-**

a) Knowingly Evades the payment of Service Tax - ***Uniworth Textiles Ltd. Vs. Commissioner of CE, Raipur [2013-TIOL-13-SC]***

b) Availment and utilisation of Credit without *actual receipt of Taxable services* or excisable goods partially or fully / Violation of Rules

c) Maintains ***false*** books of Accounts or fails to supply information/ supply false information

d) Fails to pay Service Tax already collected within 6 months,

Changes in Rate of Interest for delayed payment of Service Tax under Section 75 of the Finance Act, 1994 vide Notification No. 12/2014-ST dated 11.07.2014

Interest on delayed payment of ST (Sec 75)

Section	Particulars	Interest on Delayed payment of Service Tax
75 (W.e.f. Oct 1 , 2014)	Till 6 months	18% PA
	Beyond 6 months and upto 1 year	24% PA
	Beyond 1 year	30% PA

Interest on delayed payment of ST (Sec 75)

- **Stringent Provisions when Service Tax to be paid on accrual basis – What about Interest on Refund**
- **Additionally, Normal Penalty on Delayed Payment of Service Tax – S. 76 :**
  Maximum of Rs. 100/- Per Day or 1% of ST PM (Subject to Maximum of 50% ST payable)
- **Reduction of 3% in Rate of Interest for Assessee having Taxable Turnover < Rs. 60 Lakhs during any of FYs covered in Notice or in last preceding FY.**
- **Calculate Interest: ST of Rs. 1 Crore Payable on 6/7/2012 but paid on 6/12/2014**

How to Reduce Litigation

How to reduce litigation

- **Circular No. 967/01/2013 - CX, dated January 01, 2013 for recovery of confirmed demands during pendency of Stay applications**
- **Section 35C(2A) of CEA, 1944:** Stay Order shall stand vacated after 365 days even though delay in disposing appeal not attributable to the Appellant
- Whether CESTAT can grant extension of Stay beyond 365 days – Referred to the Larger Bench – Rajasthan State Industrial Development & Investment Corporation Limited case (*2014-TIOL-1218-CESTAT-DEL)*, relied on decisions of High Court of Karnataka and Delhi – Considering S. 254 (2A) of the IT Act, 1961 (2012-TIOL-514-HC-KAR-IT; and 2014-TIOL-246-HC-DEL-IT)

Section 35F: Mandatory pre-deposit for filing Appeal

- **First Stage Appeal:** 7.5% of the Duty demanded or Penalty or both for filing appeal with the Commissioner (Appeals) or the CESTAT;
- **Second Stage Appeal:** 10% of the Duty demanded or Penalty or both for filing second stage appeal before the CESTAT;
- Question → How much to deposit when 7.5% deposited with first appeal and **10% (2.5%) for filing second appeal**.
- The amount of pre-deposit payable would be subject to ceiling of Rs. 10 crore – Boon to Tax Evaders

Point of Taxation Rules, 2011 vide Notification No. 25/2011-ST Dated 31/03/2011, duly amended by Notification No. 13/ 2014-Service Tax Dated 11/07/2014

Changes in POT Rules – Reverse Charge

- **Rule 7 (first proviso) - POT for Reverse charge**
- *Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months;*
- *Earlier: ~~Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist~~*
- Rule 10 – Transition Rule: For the invoices issued prior to 01-10-2014, the existing rule will remain applicable

When New Services Taxable - POT

Rule 5 of POT Rules apply to New service becomes taxable - Where a service is taxed for the first time, then,—

(a) **No tax payable** to the extent the **invoice has been issued** and the **payment received** against such invoice before such service became taxable;

(b) **No tax payable** if **the payment has been received before** the service becomes taxable and **invoice has been issued within *14 days*** of the date when the service is taxed for the first time.

POT – New Services – 6th August

S. No.	Date of New Service Taxable	Date of Invoice	Date of Payment Received	Taxable/Not Taxable
1.	6^{th} August	18^{th} August	5^{th} August	Not Taxable
2.	6^{th} August	21^{st} August	5^{th} August	Taxable
3.	6^{th} August	5^{th} August	5^{th} August	Not Taxable
4.	6^{th} August	7^{th} August	7^{th} August	Taxable

Changes in Mega Exemption Notification

Changes in Mega Exemption List of Services

Notification No. 25/2012-ST Dated. 20-6-2012, duly amended by 6/2014-ST dated. 11-7-2014 (Effective from 11-7-2014)

New Exemption w.e.f 11-7-2014

- **Entry No. 2B: Exemption granted on Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto;”;**

Withdrawal of Exemption 11-7-2014

- ***Entry 7: Services by way of technical testing or analysis of newly developed drugs****, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;*

- ***Entry No. 9: Services [provided to] old[provided to or by] an educational institution in respect of education exempted from service tax, by way of,-***

  (a) auxiliary educational services; or

  (b) renting of immovable property;

Entry 9 Substituted 11-7-2014

- Entry No. 9 substituted: Services provided,-
  (a) by an educational institution to its students, faculty and staff;
  (b) to an educational institution, by way of,-
  (i) transportation of students, faculty and staff;
  (ii) catering, including any mid-day meals scheme sponsored by the Government;
  (iii) security or cleaning or house-keeping services performed in such educational institution;
  (iv) services relating to admission to, or conduct of examination by, such institution;

Amendment in Mega Exemption Notification

- Entry No. 18 Substituted: "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;";

- Earlier- 18. Services by ~~way of renting of~~ a hotel, inn, guest house, club, campsite ~~or other commercial places meant~~ for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

New Exemption w.e.f 11-7-2014

- **Entry No. 20: Services by way of transportation by rail or a vessel from one place in India to another of the following goods –**
  "(j) chemical fertilizer, organic manure and oil cakes;
  (k) cotton, ginned or baled.";

- **Entry No. 21: Services provided by a goods transport agency, by way of transport in a goods carriage of,-**
  "(e) chemical fertilizer, organic manure and oil cakes;";
  "(i) cotton, ginned or baled.";

Amendment in Exemption 11-7-2014

- **Entry No. 23 (b) : Substituted - Transport of passengers, with or without accompanied belongings, by -**
  (a)……:
  "(b) non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or";

- **Earlier- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or**

- **Withdrawing the exemption in respect of air-conditioned contract carriages – Chargeable @ 40% i.e. 4.944%**

Amendment in Mega Exemption 11-7-2014

- **Entry No. 25 (a) : Substituted - Services provided to Government, a Local authority or a Governmental authority by way of –**

  "(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or";

- **Earlier (a) ~~carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to~~ water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or**

- **Exemption would not be extendable to other services such as consultancy, designing, etc., not directly connected with these specified services**

New Exemption w.e.f 11-7-2014

- **Entry No. 26(C): Services of general insurance business provided under following schemes**

  "(c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.";

New Exemption w.e.f 11-7-2014

- **Entry No. 40 Substituted:**
- **"40. Services by way of loading, unloading, packing, storage or warehousing of rice, <u>cotton, ginned or baled</u>;**
- **Earlier - 40. Services by way of loading, unloading, packing, storage or warehousing of rice.**

- **Entry No. 41: Inserted - Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves; e.g. external asset management, custodial services, securities lending services**

- **Entry 42: Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.**

Thank You !

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