MAJOR AMMENDMENTS IN SERVICE TAX IN FINANCE BILL 2015

A DETAILED ANALYSIS

A. CHANGES APPLICABLE WEF 1ST MARCH 2015

1. **Services provided to Exporter by Agent Located outside India**-Exemption on the services provided by Commission Agent located outside India to an exporter located in India through Notification 42/2012 dated 29/06/2012 is being rescinded. This exemption has become redundant on account of amendments made in the Place of Provision rules in the previous budget where the place of provision of service provided by such agents was considered as outside the taxable territory.
2. **Person liable to pay ST in Aggregator Model:** In respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.
   In this regard appropriate amendments have been made in rule 2 of the Service Tax Rules, 1994 and notification No. 30/2012-ST dated 20.6.2012 .
   The Notification also defines
   ‘(aa) “**aggregator**” means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name o trade name of the aggregator;’;
   ‘(bca) **“brand name or trade name”** means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person;
3. **Registration under ST** : Rule 4 is being amended to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration in service tax. In this regard Order No. 1/15-ST, dated 28.2.2015, effective from 1.3.2015 has been issued, prescribing documentation, time limits and procedure for registration. It has also been prescribed that henceforth registration for single premises shall be granted within two days of filing the application.

4. **Digitally signed Invoices:** A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC (rule 4, 4A and 5).
5. **Amendments in CENVAT Credit Rules**
    - The period for taking Cenvat Credit is being extended from six months from the date of invoice to one year from the date of invoice.
    - Earlier CENVAT can be availed in case of receipt of Inputs in the factory of Manufacturer or the premises of Output service provider. The Rule is being modified that CENVAT can now also be availed on receipt of goods in the premises of Job worker in case goods are sent directly to the job worker on the direction of manufacturer or provider of output service.
    - The Manufacturer or Output Service provider may ensure that all goods sent to Bob worker may be received back within 180 days in case of inputs and 2 years in case of Capital goods. The credit will also be allowed in case of inputs/ Capital goods directly send in the premises of Job worker on the director of manufacturer or output service provider and in such case the period of 180 days or two years as the case may be will be counted from the date of receipt of such inputs/capital goods by the Job worker.
    - The rule 14 has been substituted and now provisions of Sec 11 of Central Excise Act or Section 73 are made applicable for recovery of CENVAT credit wrongly taken but not utilized.
    - Provisions of Sec 11A & 11AA of the Excise Act or Section 73 and Section 75 of Finance Act will be applicable in case of CENVAT credit wrongly taken and utilized wrongly or erroneously refunded.
6. **Advance Ruling**: Advance Ruling facility is now extended to Sole proprietorship/ OPC/ Partnership firms/LLPs (Notification no 9/2015)

B. CHANGES APPLICABLE WEF 1ST APRIL, 2015

1. **Review of Exemptions**
    - Exemption presently available on specified services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority (vide S. No. 12 of the notification No. 25/12-ST) shall be limited only to,- (a) a historical monument,

archaeological site or remains of national importance, archeological excavation or antiquity; (b) canal, dam or other irrigation work; and (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal. Exemption to other services presently covered under S. No. 12 of notification No. 25/12-ST is being withdrawn.

- Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn (S. No 14 of the notification No. 25/12-ST). The other exemptions covered under S. No. 14 of notification No. 25/12-ST shall continue unchanged.
- Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs 1,00,000 for a performance (S. No 16 of notification No. 25/12-ST). It is further clarified that the exemption shall not apply if services provided by artist as a brand ambassador.
- Exemption to transportation of food stuff by rail, or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is separately exempt, and this exemption would continue (S. Nos. 20 and 21 of notification No. 25/12-ST).
- Exemptions are being withdrawn on the following services: (a) services provided by a mutual fund agent to a mutual fund or assets management company, (b) distributor to a mutual fund or AMC, (c) selling or marketing agent of lottery ticket to a distributor. Service Tax on these services shall be levied on reverse charge basis. (S. No 29 of notification No. 25/12-ST).
- Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, an amendment is being made in the entry at S. No. 30 of notification No. 25/12-ST to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work from this entry. (S. No 30 of notification No. 25/12-ST).
- Exemption is being withdrawn on the following services

  (a) Departmentally run public telephone;

  (b) Guaranteed public telephone operating only local calls;

  (c) Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued. (S. No. 32 of notification No. 25/12-ST).

2. New Exemptions

- Service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services. (Amended in the entry at S. No. 2 of notification No. 25/12-ST refers)
- Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted. (Amendment in entry at S. No. 26A of notification No. 25/12-ST refers)
- Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted. (New entry at S. No. 43 of notification No. 25/12-ST).
- Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted. (New entry at S. No. 44 of notification No. 25/12-ST).
- Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted. These services when provided by the Government or local authority are already covered by the Negative List. (New entry at S. No. 45 of notification No. 25/12-ST).
- Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of it's members is being exempted. (New entry at S. No. 46 of notification No. 25/12-ST).
- Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS). (Amendment in notification No. 31/12-ST refers).

3. Changes in Abatement Rates

- At present, service tax is payable on 30% of the value of rail transport for goods and passengers, 25% of the value of goods transport by road by a goods transport agency and 40% for goods transport by vessels. The conditions prescribed also vary. A uniform abatement is now being prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.

- At present, Service Tax is payable on 40% of the value of air transport of passenger for economy as well as higher classes, e.g. business class. The abatement for classes other than economy is being reduced and Service Tax would be payable on 60% of the value of such higher classes.
- Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit

4. Reverse Charge Mechanism

- Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.

- Services provided by,- (i) mutual fund agents, mutual fund distributors; and (ii) agents of lottery distributor are being brought under reverse charge consequent to withdrawal of the exemption on such services. Accordingly, Service Tax in respect of mutual fund agent and mutual fund distributor services shall be paid by the assets management company or, as the case may be, by the mutual fund receiving such services. In respect of agents of lottery, Service Tax shall be paid by the distributor of lottery

5. Amendments in CENVAT Credit Rules

- The Sub Rule (7) earlier required in case of Partial reverse charge , service recipient can avail Cenvat credit on such services only when payment is made of value of input service and the service tax paid or payable as indicated in invoice, bill. The Rule has been modified by allowing Service recipient to avail CENVAT credit after payment of such service tax.

C. CHANGES APPLICABLE WITH THE ENACTMENT OF FINANCE BILL 2015

1. Services, excluding few specified services, provided by the government have been included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term "government" has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term "**government**" is being incorporated in the Act.

2. The intention in law has been to levy Service Tax on the services provided by:

    (i) chit fund foremen by way of conducting a chit.

    (ii) distributors or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing,distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld.

    An Explanation is being inserted in the definition of "service" to specifically state the intention of the legislature to levy service tax on activities undertaken by chit fund foremen in relation to chit, and distributors or selling agents of lottery in relation to lotteries.

3. Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. An illustration is being incorporated in this section to exemplify the scope of this provision.
4. Section 67 prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for service shall include:

    (a) all reimbursable expenditure or cost incurred and charged by the service provider. The intention has always been to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically by this provision.

(b) amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets;

5. Section 73 is being amended in the following manner:

    (i) a new sub-section (1B) is being inserted to provide that recovery of the service tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section73,; and

    (ii) sub-section (4A), that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

6. Section 76 is being amended to rationalize penalty, in cases not involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, inthe following manner,-

    (i) penalty not to exceed ten per cent of service tax amount involved in such cases;

    (ii) no penalty is to be paid if service tax and interest is paid within 30 days of issuance of notice under section 73 (1);

    (iii) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paidif the service tax, interest and reduced penalty is paid within 30 days of such order; and

    (iv) if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

7. Section 78 is being amended to rationalize penalty, in cases involving fraud or collusion or wilful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, in the following manner,-

   (i) penalty shall be hundred per cent of service tax amount involved in such cases;

   (ii) penalty equal to 15% of the service tax amount is to be paid if service tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;

   (iii) a reduced penalty equal to 25% of the service tax amount determined by the Central Excise Officer, by an order, is to be paid if the service tax, interest and reduced penalty is paid within 30 days of such order; and

   (iv) if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if service tax, interest and reduced penalty is paidwithin 30 days of such appellate order

8. A new section 78 B is being inserted to prescribe, by way of a transition provision, that,-
   - amended provisions of section 76 and 78 shall apply to cases where either no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and
   - in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section(1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the service tax amount.
9. Section 80 provided for waiver of penalty in specified situations, is being omitted.
10. Section 86 is being amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section35EE of the Central Excise Act.

11. Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to the amendment in section 73 for enabling such recovery.

D. CHANGES APPLICABLE FROM THE DATE TO BE NOTIFIED AFTER THE ENACTMENT OF FINANCE BILL 2015

1. The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The ‘Education Cess’ and ‘Secondary and Higher Education Cess’ shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses. Till the time the revised rate comes into effect, the ‘Education Cess’ and ‘Secondary and Higher Education Cess’ will continue to be levied in Service Tax.

2. An enabling provision is being incorporated in the Finance Bill, 2014 (Chapter VI/clause 117) to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services.

3. **CHANGES IN SECTION 66D OF NEGATIVE LIST**

- The Negative List entry that covers “admission to entertainment event or access to amusement facility” is being omitted [section 66D (j)]. Consequently, the definitions of “amusement facility” [section 65 B (9)] and “entertainment event” [section 65B(24)] are also being omitted. The implication of these changes are as follows,-
  - Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
  - Service tax to be levied on service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event, if the amount charged is more than Rs. 500 for right to admission to such an event. However, the existing exemption, by way of the Negative List entry, to service by way of admission to entertainment event, namely, exhibition of

cinematographic film, circus, recognized sporting event, dance, theatrical performance including drama and ballet shall be continued, through the route of exemption. For this purpose a new entry is being inserted in notification No. 25/12-ST. The term recognized sporting event has been defined in the proposed amendment in the said notification(No 6/2015ST dated 1st March 2015).

- The entry in the Negative List that covers service by way of any process amounting to manufacture or production of goods [section 66D (f)] is being pruned to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing/job work for production of potable liquor for a consideration. In this context, the definition of the term “ process amounting to manufacture or production of goods” [section 65 B (40)] is also being amended, along with the Negative List entry [section 66D (f)], with a consequential amendment in S. No. 30 of notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit.

- Presently, services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66D, are covered by the Negative List. Service Tax applies on the “support service” provided by the Government or local authority to a business entity. An enabling provision is being made, by amending section 66D (a)(iv), to exclude all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of “support service” [section 65 B (49)] is being omitted. Accordingly, as and when this amendment is given effect to, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax .