SERVICE TAX

1.0 Amendments in Finance Act

[Effective from date of enactment of Finance Bill, unless otherwise stated]

1.1 Amendment in Negative List

1.1.1 Widening the ambit of Service Tax by way of omission of Education Services specified under Clause (l) of Section 66D of the Finance Act, 1994 and approved vocational educational course specified under clause 11 of Section 65B of the Finance Act, 1994 *[Effective from such date on which the Finance Bill, 2016 receives assent of the President of India]*:

It is to be noted that specified Educational Services provided by way of -

(i) pre-school education and education up to higher secondary school

(ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being

(iii) education as a part of an approved vocational educational course.

was covered within the purview of Negative List and therefore was not liable to tax. The Finance Bill has proposed to delete the said entry from the Negative List so as to bring the said service within the service tax basket. However, vide **Notification No. 9/2016-ST dated 01-03-2016** the afore-mentioned services has been incorporated under Mega Exemption Notification and thus the assesse are exempt from payment of any service tax for provision of such services.

1.1.2 Omission of Service by way of Transportation of passengers by a stage carriage specified under sub clause (i) of Clause (o) of Section 66D

It is to be noted that "service of transportation of passengers, with or without accompanied belongings, by a stage carriage" has been omitted with effect from 1st June, 2016.

However, services provided by a non-air conditioned contract carriage will be exempted from payment of service tax as inserted in clause (bb) in entry 23 of the Exemption notification No. 25/2012 with effect from 1st June, 2016.

1.1.3 The services provided in relation to transportation of goods has been kept outside the ambit of Negative List, although exemptions provided thereon

It is to be noted that services by way of transportation of goods (i) by road except the services of (A) a goods transportation agency; or (B) a courier agency; (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or (iii) by inland waterways; has been omitted from the clause (p) of Negative List.

However services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India will be exempted from payment of service tax vide Notification No. 9/2016-ST dated 01-03-2016 with effect from 1st June, 2016.

1.2 Explanation 2 of section 65B(44) has been substituted to levy service tax on activities carried out by a lottery distributor or selling agents of the State Government

Section 65B(44) has been amended to clarify that any activity carried out by a lottery distributor or selling agents, on behalf of the State Government in relation to promotion, marketing etc. shall be covered within the definition of Service and shall be liable to Service Tax.

1.3 Broadening the ambit of Declared Services so as to include assignment of right to use the radio frequency spectrum and subsequent transfers thereof (Section 66E)

The definition of Declared Service under Section 66E has been amended so as to include assignment by the Government of the right to use the radio frequency spectrum and subsequent transfers thereof.

The above service has been inserted so as to make it clear that assignment by the Government of the right to use the spectrum and subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of tangible goods.

1.4 <u>Section 67A of the Finance Act, 1994 amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011</u>

Section 67A of the Finance Act, 1994 has been amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011 by inserting the following sub section-

"(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed."

1.5 <u>Time limit for issuance of Show Cause Notice for recovery of service tax for cases not involving fraud, collusion, suppression etc. has been extended</u>

Section 73 of the Finance Act, 1994 has been amended to increase the time limit for issuance of Show Cause Notice for recovery of service tax in cases where service tax is not paid, short paid, not levied or short levied or erroneously refunded, for cases not involving fraud, collusion, suppression etc. from eighteen months to thirty months.

The said amendment seems contrary to the approach of the present government towards liberalizing litigation and creating a tax friendly environment.

1.6 <u>Insertion of Draconian Provision under Section 73B regarding payment of interest on amount collected in excess & Section 75 regarding payment of interest by the tax payer in cases wherein the amount of Service Tax is collected by the Service Provider but not deposited within the due date prescribed</u>

Section 75 of the Finance Act, 1994 has been revamped so as to provide that the service provider shall be liable to pay interest at a higher rate, in case the amount of service tax is collected from the service recipient but not deposited to the credit of Central Government.

Further, the rate on which the person shall be liable to pay interest as specified under **<u>Notification No. 13/2016-ST dated 01-03-2016</u>** is mentioned here-in-below for ease of reference:

Sl No.	Situation	Rate
1.	Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due	24%
2.	Other than in situations covered under serial number 1 above.	15%

Similarly, it has been provided that the assesse shall be liable to pay service tax at the rate of 15%

The said amendment would be applicable from such date on which the Finance Bill, 2016 receives assent of the President of India.

1.7 <u>Respite from ancilliary proceedings under Section 78A of the Finance Act, 1994 shall be deemed to be concluded in certain cases</u>

An Explanation has been inserted after Section 78A so as to provide that where any proceeding for the person liable to pay duty have been concluded under clause (i) of first proviso to Section 76 or clause (i) of second proviso to Section 78 in respect of duty, interest and penalty, i.e., where main demand, interest and penalty imposed are paid in conclusion of the proceedings, all proceedings in respect of penalty against other persons, if any, in the said proceedings shall also be deemed to be concluded.

1.8 <u>Relief from various provisions under Service Tax for prosecution</u>

The monetary limit for launching of prosecution under Section 89 of the Finance Act, 1994, has been **from INR 50 Lakhs to INR 2 Crore of service tax evasion.**

The power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it to the Government, and amount of such tax collected but not paid must exceed the threshold limit of Rs 2 crore.

1.9 <u>Section 93A of the Finance Act, 1994 amended to allow grant of rebate on input services by notification.</u>

Section 93A of the Finance Act, 1994 has been amended to enable granting of rebate of service tax paid on taxable services by way of notification as well as rules, which are used as input services for manufacturing or processing or for providing any taxable services in or in relation to export of goods or services.

1.10 <u>Retrospective effect of Notification issued under section 93A of Finance Act, 1994</u>

It is pertinent to note that Notification No. 41/2012- ST, dated the 29th June, 2012 was amended vide notification No. 1/2016-ST dated 3rd February, 2016 so as to, inter alia, allow rebate of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment has been given retrospective effect from the date of application of the parent notification, i.e., from 01/07/2012. Time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of amendment carried out vide Notification No.1/2016-ST dated 3rd February, 2016.

1.11 <u>Section 101 of the Finance Act, 1994 inserted providing for refund of service tax paid on construction, erection, commissioning installation completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works provided to bodies set up by government [Applicable upto 01-04-2020]</u>

Section 101 of the Finance Act, 1994 has been inserted to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to bodies set up by Government but not necessarily by an Act of Parliament or a State Legislature during 01st June 2012 to 29th January 2014.

Refund of Service Tax paid on the said services shall also be allowed in accordance with the law including the law of unjust enrichment. An Application for refund of service tax should be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President for claiming refund of Service Tax paid on such services.

1.12 <u>Section 102 of the Finance Act, 1994 inserted providing refund of service tax paid on certain services provided to the Government, local authority or Government authority [Applicable upto 01-04-2020]</u>

Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as –

(i) an educational,

(ii) a clinical, or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

was withdrawn with effect from 01/04/2015.

However, vide Section 102 the said exemption has been provided for the specified services provided under a contract which had been entered prior to 01/03/2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The services provided during the period from 01/04/2015 to 29/02/2016 under such contracts shall remain exempted from the levy of service tax.

An Application for refund of service tax may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

1.13 <u>Section 103 of the Finance Act, 1994 providing refund of service tax paid on construction, erection, commissioning or installation of original work pertaining to an airport or port [Applicable upto 01-04-2020]</u>

Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 01/04/2015. The same has been restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015.

The services provided during the period from 01/04/2015 to 29/02/2016 under such contracts have been exempted from service tax. An Application for refund of service tax may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

2.0 Amendment made in existing Mega Exemption Notification i.e. 25/2012-ST dated 17-03-2012

[Vide Notification no. 09/2016-ST dated 01-03-2016, effective from 01-04-2016 and Notification no.11/2016-ST dated 01-03-2016, effective from 01-04-2016]

2.1 Exemptions Added

a) Services provided by the Indian Institutes of Management such as :

- 2 year full time Post Graduate Programme in Management (PGPM)
- 5 year Integrated Programme in Management
- Fellowship Programme in Management

b) Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship;

c) Services provided by way of skill/vocational training under Deen Dayal Upadhyay Grameen Kaushalya Yojana;

d) Services to the "In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation" by way of construction, erection etc. of a civil structure or any other original works pertaining component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY); **[effective from 01-03-2016]**

e) Services to the "Beneficiary-led individual house construction / enhancement" by way of construction, erection etc., of a civil structure or any other original works pertaining component of Housing for All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY); **[effective from 01-03-2016]**

f) Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under the "Affordable housing in partnership" component of Pradhan Mantri Awas Yojana or any housing scheme of a State Government; **[effective from 01-03-2016]**

g) Services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies;

h) Services of Life Insurance Business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India is being exempted from service tax.

i) Services provided by Employees‟ Provident Fund Organisation (EPFO) to employees governed under the Employees‟ Provident Funds and Miscellaneous Provisions Act, 1952;

j) Services provided by Insurance Regulatory and Development Authority (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999;

k) Services provided by SEBI set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market;

l) Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer‟s Welfare, Government of India, by way of knowledge dissemination;

m) Provision of service in or in relation to Information technology Software Service under section 66B read with section 66E of the Finance Act 1994 shall be exempted and no service tax shall be required to paid thereon, subject to the following conditions:-

- When the value of such Media on which such software is recorded shall be determined in terms with Section 4A of Central Excise Act, 1944 and the assesse has paid appropriate duty of excise under Section 3 ibid or additional duty of customs as leviable under Section 3(1) of Customs Tariff Act, 1985

- A declaration made by the service provider on the invoice to the effect that no amount in excess of the RSP declared on such media has been recovered from the customer. [**effective date - 01-03-2016**]

n) Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees are being exempted from service tax. This is an addition to the 'Department of Science & Technology, GOI'. [**effective date- 01-04-2016**]

2.2 Exemptions Withdrawn

a) Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro (under S. No 14 of the notification No. 25/12-ST) is being withdrawn, in respect of contracts entered into on or after 1st March 2016. **[effective from 01-03-2016]**

b) Services provided by ropeway, cable car or aerial tramway for Transport of passengers, with or without accompanied belongings is being omitted from the ambit of exemption.

2.3 Exemptions Amended:

a) Services provided by a **Senior Advocate** to any person other than a person ordinarily carrying out any activity relating to any industry, commerce, or any other business or profession has been kept out of the ambit of Mega Exemption Notification and consequently service tax shall be leviable thereon.

However, the existing dispensation regarding legal services provided by a firm of advocates or an advocate **other than senior advocate** is being continued.

b) The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased **from ₹ 1 lakh to ₹ 1.5 lakh** per performance.

3.0 Amendment made in existing Exemption Notification i.e. 26/2012-ST dated 20-06-2012

[Vide Notification no.08/2016-ST dated 01-03-2016, effective from 01-04-2016]

Sl No.	Description of Taxable Service	Earlier Taxable Value	Amended Taxable Value	Condition
1	Transport of Goods by Rail by Indian Railway	30%	30%	CENVAT Credit on Input Services has been allowed
2	Transport of Goods by Rail by any Other Person	30%	40%	CENVAT Credit on Input Services has been allowed.
3	Transport of passengers, with or without accompanied belongings by rail	30%	30%	CENVAT Credit on Input Services has been allowed.

4	Services of goods transport agency in relation to transportation of goods **other than used household goods**	30%	30%	No Change
5	Services of goods transport agency in relation to transportation of used household goods	30%	40%	No Change
6	Services provided by a foreman of chit fund in relation to chit	-	70%	No CENVAT Credit on inputs, input services & capital goods
7	"Transport of passengers, with or without accompanied belongings, by Stage Carriage	-	40%	Same as above
8	Transport of goods in a vessel	30%	30%	CENVAT Credit on Input Services has been allowed.
9	Services by a tour operator in relation to,- (i) a tour, only for the purpose of arranging or booking accommodation for any person	10%	10%	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, includes only the service charges for arranging or booking accommodation for any person but does not include cost of such

				accommodation.
	(ii) tours other than (i) above	40%	30%	(i) CENVAT credit on inputs, capital goods and input services other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules'2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour.";
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	25%/ 30%	30%	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver."

(b) **Insertion** of Explanation 'BA':- It is being made clear that cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

(c) **Omission** of the definition of the term **'package tour'**.

4.0 Amendment made in existing Point of Taxation Rules, 2011

[Vide Notification no.10/2016-ST dated 01-03-2016, effective from 01-03-2016]

The Point of Taxation Rules, 2011 has been amended so as to provide specific powers under section 67A to make rules regarding point in time of rate of service tax. Thus, any doubt about the applicability of service tax rate or apparent contradiction between section 67A and POTR is taken care of. Therefore, consequent modifications have been done in POTR :-

(a) Rule 5 of POTR applies when a new service comes into the service tax net. Although in the case of new levy, provisions of Chapter V of the Finance Act, 1994, and rules made thereunder, are invariably made applicable in relation to the levy and collection of the new levy. However, doubts have been raised regarding its applicability in case of new levy. Therefore, an Explanation is being inserted in Rule 5 stating that the same is applicable in case of new levy on services.

(b) Further, in rule 5 of POTR, it is provided that in two specified situations the new levy would not apply. Another Explanation is being inserted therein stating that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable.

These rules may be called the **Point of Taxation (Amendment) Rules, 2016.**

5.0 Krishi Kalyan Cess

[Effective from 1st day of June, 2016 after enactment of the Finance Bill, 2016]

An enabling provision is being made to empower the Central Government to impose a Krishi Kalyan Cess at a rate of 0.5 percent on the value of all or any of the taxable services effective from June 1, 2016. The proceeds of the cess will be exclusively used for financing initiatives for improvement in agriculture and upliftment of farmers. The Input tax credit of the cess will be available for payment of this cess. This cess wont form a part of the cost for the Manufacturers &/or Service Provider as they can get CENVAT Credit as per amended CENVAT Credit Rules, unlike Swachh Bharat Cess.
Currently, the service tax stands at 14.5 percent comprising of 14 percent service tax and 0.5 percent Swachh Bharat Cess. Now, including the Krishi Kalyan Cess, the service tax now stands at 15 percent.