

Students appearing in June 2016 Examination shall note the following:

1. Finance Act, 2015 is applicable.
2. Applicable Assessment year is 2016-17 (Previous Year 2015-16).
3. Since, Wealth Tax Act, 1957 has been abolished w.e.f. 1st April, 2016. The questions from the same will not be asked in examination from December 2015 session onwards.
4. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBEC & Central Government, on or before six months prior to the date of the examination.
5. **DOWNLOAD THE LATEST Study Material of Advanced Tax Laws and Practice (based on Finance Act, 2015)**
- Relevant for June 2016 Exam – CS FINAL: <https://www.icsi.edu/Docs/Website/PP-ATLP-2015-FULL%20BOOK.pdf>
6. **A GUIDE ON: [How to Deal with CS Final Advanced Company Law and Practice](http://www.caclubindia.com/articles/how-to-deal-with-cs-final-advance-tax-laws-a-pass-out-s-guide-25336.asp)** -
- <http://www.caclubindia.com/articles/how-to-deal-with-cs-final-advance-tax-laws-a-pass-out-s-guide-25336.asp>



AMENDMENTS TO INDIRECT TAX – CS PROFESSIONAL – JUNE 16

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CENTRAL EXCISE

Rate of Basic excise duty for JUNE 16 EXAM : 12.5% w.e.f. 1.3.2015.

b) EC & SHEC not applicable -w.e.f. 01.03.2015 All goods falling under the First Schedule to CETA, 1985 shall be exempt from the levy of Education Cess and Secondary & Higher Education Cess.

(2) Section 3A:The word 'factor' used in section 3A also includes 'factors'. Hence, the Central Government can specify more than one factor relevant to the production of goods notified u/s. 3A. [w.e.f. 1.3.2015, by the Finance Act, 2015]

CENVAT CREDIT RULES, 2004

Rule 5B: Following services are notified for claiming refund of CENVAT credit: [Notification No. 15/2015]	Service portion of works contract service (2) Renting or Hiring of passenger motor vehicle (where no abatement is claimed) (3) Manpower supply service or Security Service (since w.e.f. 1.4.2015, covered under full reverse charge, therefore provisions of rule 5B shall not be applicable)
Rule 6(3): option 1	(a) Pay an amount equal of 6% of value of exempted goods and 6%7% of value of exempted services. But in case of transportation of goods or passengers by rail service pay 2% of value of exempted goods and services. (b) Claim total CENVAT credit of: > Input/ Input services used only for taxable goods/services. > Input/ Input services which are commonly used for both taxable & exempted goods and services. (c) CENVAT credit of input/ input services used exclusively for exempted goods or services not allowed. (d) Buyer cannot claim CENVAT credit of 6% of value of exempted goods & 6%7% of value of exempted services. [7% for exempted service w.e.f 1.6.2015 vide Notification No. 14/2015, dated 19th May 2015]
Rule 6(6): The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case excisable goods removed without payment of duty are either	Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, in terms of the provisions of S.No.40A of the Table in notification No.12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated that 17th March, 2012. [Notification No. 21/2015, 7th Oct 2015]
W.E.F 14.5.2015, PENALTY PROVISIONS OF RULE 15 IS ALIGN WITH THE SEC. 11AC/SEC. 78.	RULE 15: CONFISCATION AND PENALTY (1) If any person takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then (i) all such goods shall be liable to confiscation and (ii) such person shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be or Rs. 2,000, whichever is greater. (ii) such person shall be liable to a penalty in terms of section 11AC(1) (a) or (b) of the Central Excise Act or section 76(1) of the Finance Act, as the case may be. - no fraud case

	(2) In a case fraud the manufacturer or service provider shall also be liable for penalty u/s. 11AC(1) (c),(d) or (e) of the Central Excise Act. or u/s 78(1), as the case may be. (3) Any order under sub rule (1), (2) or (3) shall be issued by the Central Excise Officer following the principles of natural justice.
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CENTRAL EXCISE RULES, 2002

RULE 25: CONFISCATION AND PENALTY	Subject to the provisions of section 11AC of the Act, any producer, manufacturer, registered person of a warehouse or an importer who issues an invoice on which CENVAT credit can be taken or a registered dealer shall be liable to a penalty not exceeding the amount of duty or 5000 whichever is greater, if the said person – [Notification 8/2015, w. e. f 14. 5. 2015] (a) Removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or (b) Does not account for any excisable goods produced or manufactured or stored by him; or (c) Engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or (d) Contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty.
SETTLEMENT COMMISSION	Section 31(c): “case” means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under subsection (1) of section 32E is made: However, when any proceeding is referred back (in any appeal or revision, as the case may be (omitted w. e. f. 14. 5. 15), by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding within the meaning of this clause; Section 32: Customs and Central Excise Settlement Commission The settlement commission shall consists of a Chairman and many Vice-Chairmen and other members as the central govt. thinks fit and function within the department of the Central Govt. dealing with customs and central excise matters. Section 32B In the event of the occurrence of any vacancy in the office of the chairman by reason of his death, resignation or otherwise, the Vice-Chairman, or the members (w. e. f. 14. 5. 15) as the central Govt. may by notification authorize in this behalf, shall be act as the Chairman until the date on which a new chairman, appointed in accordance with the provisions of this chapter to fill such vacancy, enters upon his office. When the chairman is unable to discharge his functions owing to absence, illness or any other cause the Vice-Chairman, or the members as the central Govt. may by notification authorize in this behalf, shall discharge the functions of the Chairman until the date on which chairman resumes his duties. Section 32k: Power of Settlement Commission To Grant Immunity From Prosecution And Penalty: The settlement commission may, if it is satisfied that any person who made application for settlement has cooperated with settlement commission and made full and true disclosure of his duty liability, grant

	immunity from penalty and prosecution after imposing conditions it my thinks fit.
	Settlement commission has no jurisdiction to entertain the matters in relation to the goods specified u/s. 123 of the Customs Act, 1962 which includes Gold. Hence, settlement commission cannot entertain in respect of gold smuggling. [Shri Ram Niwas Verma (Delhi HC)]- on 1.10.2015 CBEC also clarified the same].

CLASSIFICATION

➤ Circular No. 1008, Dated, 20.10.2015: Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG). ➤ Whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG).	In the case of in case of M/s Gemini Instratech, dated 13th Aug 2015 the Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that the above parts (such as Tower, Nacelle, Rotor, blades, doors) may be treated as parts and components of wind operated electricity generators eligible for exemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.
➤ Circular No. 1007, dated 12. 10. 2015:	Coconut oil packed in retail packs of 50 ml, 100 ml and 200 ml and 500 ml would be classifiable as coconut oil (Heading NO. 1513) and not as hair oil (heading No. 3305). Based on Judgment of Capital Technologies(2015)(CESTAT). [Earlier, CBEC circular No. 890, classified that edible coconut oils packed upto 200 gm shall be classified as hair oil., since appeal filed by Dept. rejected by SC, therefore the CBEC withdraw its Circular No. 890/2009]

REGISTRATION

Registration not required for every manufacturing unit engaged in the manufacture of aluminium roofing panels (falling under tariff item 7610), if such roofing panels are consumed at the site of manufacture for execution of the project and the manufacturer of the goods has a centralized billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where such centralized billing or accounting is done. [Notification No.17/2015]

MISCELLANEOUS

Section 37 of the Central Excise Act, 1944 empowers Central Government to frame various rules. W.e.f 14.5.2015, amendment has made under this section to fix minimum penalty under various rules from Rs. 2000 to Rs. 5000.

Adhoc Rate increased [Notfn.14 /2015]: In case of Manufacturer/ Service Provider, producing / providing excisable goods / taxable services, as well as and exempted goods / services, he can avail full CENVAT Credit but pay **7%** on the value of Exempted Goods and Exempted Services. [**Note:** Earlier Rate was 6%] **w.e.f.01.06.2015.**

Application to AAR – Resident Firms included:

w.e.f. 01.03.2015, **Resident Firms** can also apply to AAR. Firm shall have the meaning assigned to it in Sec.4 of the Indian Partnership Act, 1932 and includes –

1. LLP u/s 2(1)(n) of the LLP Act, 2008,
2. LLP which has no Company as its Partner,
3. Sole Proprietorship i.e. Individual who engages himself in an activity defined u/s 23A(a) of CEA,

4. One Person Company u/s 2(62) of the Companies Act, 2013.

CUSTOMS

PENALTY FOR IMPORTATION OF GOODS [SEC. 112]

While the improperly imported goods can be seized and confiscated under Section 111, the person responsible for this wrongful act can be penalized under Section 112 of the Customs Act, 1962.

Penalty under Section 112 of the Customs Act, 1962 may be imposed on any person who in relation to any goods does or omits to be any act of commission or omission, which would render such goods liable to confiscation under

Section 111 of that Act. The quantum of penalty is as under.

Particulars	Quantum of Penalty Not Exceeding –
Prohibited goods	The value of goods or Rs. 5,000 whichever is greater.
Dutiable goods	The duty sought to be evaded or Rs. 5,000 whichever is greater. [old provision] W.e.f 14.05.2015: 10% of duty sought to be evaded or rs. 5000, whichever is higher and subject to section 114A. Further, where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.
In case the value stated in Bill of Entry or Baggage Declaration is less than actual value	The difference between (actual value and declared value thereof) or `5,000 whichever is greater
In respect of goods that are prohibited and in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The value of the goods) or (the difference between the actual value and the declared value thereof) or `5,000 whichever is greater
In the case of dutiable goods in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The Duty sought to be evaded) or (the difference between the actual value and declared value) or `5,000 whichever is greater

PENALTY FOR ATTEMPT TO EXPORT GOODS IMPROPERLY [SECTION 114]

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as follows -

- (a) In case of prohibited goods, penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater
- (b) In the case of dutiable goods, other than prohibited goods, penalty not exceeding the sought to be evaded or Rs. 5000, whichever is the greater; [old provision]

w.e.f 14.05.2015: 10% of duty sought to be evaded or Rs.5000, whichever is higher and subject to section 114A. Further, where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.

- (c) In the case of any other goods, penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

SECTION 66B: RATE OF SERVICE TAX

Period	Service Tax	EC&SHEC	Swachh Bharat Cess	Effective Rate of Service Tax
From 1.4.2015 to 31.05.2015	12%	3%	N.A	12.36%
From 01.06.2015	14%	Not applicable (subsumed in revised rate of service tax)	0.5 % on taxable value. (APPLICABLE FOR CS JUNE -16 EXAM & APPLICABLE FOR CA NOV 2016 EXAM)	14.5 % for CS JUNE 2016 Exam. & For CA - NOV 2016 EXAM

The Central Government, being satisfied that it is necessary in the public interest so to do, has exempted all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, **which is in excess of Swachh Bharat Cess calculated at the rate of 0.5%** of the value of taxable services: Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15th day of November, 2015

SWACHH BHARAT CESS (SBC) FREQUENTLY ASKED QUESTIONS (FAQ)

Background Chapter VI (Section 119) of the Finance Act 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC). The Government has announced 15th November, 2015 as the date from which the provisions of Section 119 would come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers). Simultaneously, Government has also notified levy of Swachh Bharat Cess at the rate of 0.5% on all taxable services. Effectively, the rate of SBC is 0.5% and new rate of service tax plus SBC is 14.5%. The proceeds from this cess will be exclusively used for Swachh Bharat initiatives.

In this context certain points have been clarified with the help of FAQs given below:

Q.1 What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015 on all the taxable services at the rate of 0.5% of the value of taxable service.

Q.2 What is the date of implementation of SBC?

Ans. The Central Government has appointed 15th day of November, 2015 as the date from which provisions of Swachh Bharat Cess will come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers).

Q.3 Whether SBC is leviable on exempted services and services in the negative list?

Ans. Swachh Bharat Cess is not leviable on services which are fully exempt from service tax or those covered under the negative list of services.

Q.4 Why has SBC been imposed?

Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q. 5 Where will the money collected under SBC go?

Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilise such sums of money of the SBC for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6 How will the SBC be calculated?

Ans. SBC would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax.

Q. 7 Whether SBC would be required to be mentioned separately in invoice?

Ans. SBC would be levied, charged, collected and paid to Government independent of service tax. This needs to be charged separately on the invoice, accounted for separately in the books of account and paid separately under separate accounting code.

Q. 8 Whether separate accounting code is there for Swachh Bharat Cess?

Ans. Yes, for payment of Swachh Bharat Cess, there is a separate accounting code. These are as follows:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

DEFINITION OF SERVICE TAX

Explanation 2 w.e.f 14.05.2015: Following are however regarded as services and chargeable to tax :

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

- (a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.’; Section 65B (23A): “foreman of chit fund” shall have the same meaning as is assigned to the term “foreman” in clause (j) of section 2 of the Chit Funds Act, 1982;’;

Section 65B(31A): “lottery distributor or selling agent” means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organized by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998.

What constitute Consideration for the purpose of Service Tax?

Clause (a) of Explanation to Section 67, provides that “consideration” includes:-

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, **except in such circumstances, and subject to such conditions, as may be prescribed [Refer Rule 5];**
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, or, the discount received, [i.e, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket] . **[Substituted by the Finance Act, 2015 w. e. f 14.05.2015]**

Negative List Section 66D

➤ **Manufacturing of Goods: services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption**
“process amounting to manufacture or production of goods” means a process on which excise duty is leviable whether under Central Excise Act, 1944; or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force. [Section 65B(40)]

Note: w.e.f 1.6.2015 services by way of carrying out any process amounting to manufacture of alcoholic liquor for human consumption shall be liable for service tax.

➤ **Activities of betting/gambling/lottery**
Betting, gambling or lottery shall not be taxable. However, auxiliary services used for organizing or promoting betting or gambling event.

For the purposes of this clause, the expression “betting, gambling or lottery” shall not include the activity specified in Explanation 2 to clause (44) of section 65B- 1.6.2015

➤ Any service provided to business entity by Government or local authority is outside the Negative list and therefore taxable from a date to be notified. Currently, **only support service is taxable.**

COMPOSITION SCHEME

(1) Option to air Travel Agent

In this case service tax is payable by the assessee as per the following optioni) **14%** on commission; or
ii) **0. 7%** of the basic fare in the case of domestic bookings, and
iii) **1.4%** of the basic fare in the case of international bookings,
[Before 1.6.2015, the rate was 12%, 0.6% and 1.2% as the case may be plus EC & SHEC]

(2) Life insurance business: An insurer carrying on life insurance business shall have the following option to pay Service tax –

(i) @ 14% on the risk premium;

Risk premium = Gross premium charged from a policy holder (-)amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) In all other cases: [only if break up not known]

First year: @ 3.5% of the premium charged from policy holder

Subsequent year: @ 1.75 % of the premium charged from policy holder

[Before 1.6.2015, the rate was 12%, 3% and 1.5% as the case may be plus EC and SHEC]

Rule 6(7C): Optional composition scheme for Distributor or Selling agent of lotteries.

☐ **Who can take the benefit:** The distributor or selling agents rendering the taxable service of promotion, marketing or organizing/ assisting in organizing lottery.

☐ **Effective rate:**

Where the guaranteed lottery prize payout is > 80%	Rs. 8200 on every or part of rs. 10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.
Where the guaranteed lottery prize payout is ≤ 80%	Rs. 12800 on every or part of Rs. 10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.
[Before 1.6.2015, the rate was 7000 and 11,000, as the case may be plus EC and SHEC]	

MEGA EXEMPTION

Exemption applicable from 1.04.2015 (i) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent; (ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables; (iii) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo; (iv) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;	“Zoo” means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public but does not include a circus and an establishment of a licensed dealer in captive animals.
Exemption applicable from 1.6.2015 Services by way of right of admission to,- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet; (ii) recognised sporting event; (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs. 500 per person.”.	“recognised sporting event” means any sporting event,- (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or (ii) covered under entry 11.

From 1.6.2015, job work processing in relation to alcoholic liquors for human consumption is liable to service tax.

(4) Services by the following persons in respective capacities – are exempt.

(a) sub-broker or an authorised person to a stock broker;

- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;

REVERSE CHARGE

From a date to be notified by the Central Government, all services (except renting and services covered under section 66D(a)(i)/(ii)/(iii)] provided by government to business entity are under full reverse charge. [Currently, only support services are under reverse charge.

Section 86 (w.e.f 14.05.2015): in relation to matter of rebate under service tax no appeal can be filed to CESTAT rather it is filed for revision before central Govt. [similar to excise]

Rule 6(6A) of the Service Tax Rules, 1994: Where the assessee does not pay self-assessment tax, the same shall be recoverable alongwith interest in the manner prescribed u/s. 87 of the Act. *[Omitted from 14.05.2015 and consequently section 73(1B) has been inserted]*

OTHER EXEMPTION

(1) Notification No. 17/2015-Service Tax, dated 19.5.2015: Taxable services provided by way of, (i) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL); (ii) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to the power generating companies or plants, under the Power System Development Fund Scheme of the Ministry of Power shall be exempted till 31.3.2017 from the whole of the service tax, subject to the satisfaction of prescribed conditions.

However, the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and Liquefied Natural Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in clause (8) of section 2 of the Electricity Act, 2003:

Notification No. 19/2015-Service Tax, dated 14.10.2015: The service tax payable between 1.7.2012 to 13.10.2014, on the service provided by an Indian Bank or other entity acting as an agent to the MTSO (Money Transfer Service Operators) in relation to remittance of foreign currency from outside India to India, shall not be required to be paid. [by virtue of section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994]

Circular No.186/5/2015-ST, dated 5.10.2015:

(1) A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. **Therefore**, if ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary storage etc. are provided by GTA in the ordinary course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on the entire amount and not only on transport charges.

(2) It is also clarified that transportation of goods by road by a GTA, in cases where GTA undertakes to reach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of abatement of 70%, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever name called.

Letter C. No. ST-20, dated 13.8.2015: NO service tax shall be levied on Pick-up or the Home Deliveries of the food sold by the Restaurant. In the given case, the dominant nature of the transaction is that of sale and not service as the food is not served at the Restaurant and other element of service such as live entertainment, air conditioning, or personalized hospitality are also offered.

Chit Services liable for Service Tax

✓ **Following significant amendments has been made by the Finance Act, 2015 w.e.f 14.5.2015:**

w.e.f. 14.05.2015 Service includes any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in Money or Actionable Claim, including the activity carried out by a –

1. Lottery Distributor / Selling Agent in relation to promotion, marketing, organising, selling of Lottery or facilitating in organising Lottery of any kind, in any other manner,
2. Foreman of Chit Fund for conducting or organising a Chit in any manner.

Note:

(a) **Lottery Distributor / Selling Agent** means a person appointed or authorised by a **State** for the purpose of promoting, marketing, selling or facilitating in organising Lottery of anykind, in any manner, organized by such State as per the Lotteries (Regulation) Act, 1998.

(b) **Foreman** of Chit Fund shall have the same meaning as per Sec.2(j) of the Chit Funds Act,1982.

- ✓ **Support Services: Support Services** provided by **Government** to Business Entities is taxable under **Reverse Charge**. The term **Support Services** to be changed to "Any Services". (**w.e.f. date yet to be notified**).
- ✓ **Government defined: Government means** : 1. Central/State Government, 2. Union Territory, 3. The Departments of above. **Government excludes** Any Entity, whether created by a Statute or otherwise, the accounts of which are **not** required to be kept in accordance with Article 150 of the Constitution or the Rules made thereunder.
- ✓ **Example of Services to RBI taxable:** Any Service provided to the RBI is liable for ST. [**Example:** Agency Services by any Bank to the RBI, for which Fee / Commission / other Consideration is received by the Agent Bank is still liable for ST.]
- ✓ **Yoga included** Charitable Activities eligible for ST Exemption include advancement of religion or spirituality or yoga.
- ✓ **Alcoholic Liquor manufacture liable for ST** 1. Any process amounting to manufacture of goods (**w.e.f. 01.06.2015** excluding Alcoholic Liquor for Human Consumption) are exempt from ST under the Negative List. 2. **W.e.f. 01.06.2015**, manufacture of Alcoholic Liquor for Human Consumption shall attract ST. (whether intermediate process or the entire process itself) [**Notification No. 6/2015–ST, dated 01.03.2015**]
- ✓ **Amusement Park omitted from Negative List: W.e.f. 01.06.2015** The Service "Admission to Entertainment Event or access to Amusement Facility" is omitted from the Negative List. Thus, it becomes fully taxable. However, the following events **continue to be exempt** [**Notification No. 6/2015–ST, dated 01.03.2015**] –
 - Exhibition of Cinematographic Film, Circus, Dance, Or Theatrical Performances including Drama or Ballet.
 - Recognized Sporting Events. [**Note:** "Recognised Sporting Event" means any Sporting Event, organised by a Recognised Sports Body where the participating team or individual represent any District, State, Zone or Country, or those Sporting Events where Sponsorship of the same is exempt under Notfn.25/2012–ST.]

- Concerts, Pageants, Award Functions, Musical Performances or Non–Recognized Sporting Events where the consideration for such admission is **upto Rs. 500** per person.
- **Ambulance Service exempt W.e.f. 01.04.2015** Ambulance Services provided by any Service Provider is exempt from ST. [Notification No. 6/2015–ST, dated 01.03.2015]
- ✓ **Exemption for Intermediary at Rural Area – Banking and Insurance related Notfn.No.20/2015 – ST dated 21.10.2015:** Exemption is available as under –

1. Business Facilitator or a Business Correspondent to a Banking Company with respect to a **Basic Savings Bank Deposit Account** covered by **Pradhan Mantri Jan Dhan Yojana** in the Banking Company’s **Rural Area Branch**, by way of account opening, cash deposits, cash withdrawals, obtaining e–life certificate, Aadhar seeding,
2. Services by any person as an **Intermediary** to a Business Facilitator or a Business Correspondent with respect to the above services,
3. Business Facilitator or a Business Correspondent to an **Insurance Company** in a **rural area**.

Note: Basic Savings Bank Deposit Account means an account opened under relevant RBI Guidelines.

Life Insurance Schemes exempt from ST: 1. Pradhan Mantri Suraksha Bima Yojana, w.e.f. 30.04.2015
 2. Pradhan Mantri Jeevan Jyoti Bima Yojana, w.e.f. 30.04.2015
 3. Pradhan Mantri Jan Dhan Yojana, w.e.f. 30.04.2015
 4. Varishtha Pension Bima Yojana w.e.f. 01.04.2015
 [Notification No. 12/2015–ST, dated 30.04.2015]

Specified Pilgrimage Services exempt: Services provided by following **Specified Organisations** in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, under bilateral arrangement, is exempt from ST.

1. Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking or
2. Haj Committee of India and State Haj Committees constituted under the Haj Committee Act, 2002, for making arrangements for the pilgrimage of Muslims of India for Haj.

Specified Services exempt: 1. Services by operator of Common Effluent Treatment Plant by way of Treatment of Effluent.

2. Services by way of pre–conditioning, pre–cooling, ripening, waxing, Retail Packing, labelling of fruits & vegetables which do not change or alter the essential characteristics of the Fruits or Vegetables.
3. Services by way of Admission to a Museum, National Park, Wildlife Sanctuary, Tiger Reserve or Zoo.
4. Service provided by way of exhibition of Movie by an Exhibitor to the Distributor or an Association of Persons consisting of the Exhibitor as one of its Members.
5. Services by way of collection of Contribution under Atal Pension Yojana (APY)

Note: First 4 items w.e.f. 01.04.2015 [Notfn.6/2015–ST] 5th Item w.e.f. 30.04.2015 [Notfn.12/2015–ST]

Person liable for ST Registration : w.e.f. 01.03.2015 Any person other than the Service Provider, in case of Reverse Charge Mechanism, where he is liable for Service Tax – should register under ST within 30 days from the date on which ST is levied or Business is commenced, whichever is **later**.

INTEREST UNDER EXCISE, SERVICE TAX & CUSTOMS

**SECTION 11AA
(CENTRAL EXCISE)**

SECTION 75 (SERVICE TAX)

**SECTION 28AA
(CUSTOMS)**

(a) Rate - 18% p.a (b) No concessional rate. (c) interest can be waived – where, — (i) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B/Sec 151A; and (ii) such amount of duty is voluntarily paid in full, within 45 days from the date of issue of such order, without reserving any right to appeal against the said payment at any subsequent stage of such payment (d) Interest shall be calculated from the due date of payment of duty till the date of actual payment.	(a) Rate: For delay up to 6 months - 18% p.a For Next 6 months – 24% p.a Beyond 1 year – 30% p.a (b) The concession of 3% on applicable rate is provided to assessee whose turnover does not exceed Rs. 60 lakh in preceding Financial year. [In such case the applicable rate = 15%/21%/27% as the case may be (c) Interest cannot be waived. (d) Interest shall be calculated after the expiry of due date of payment till the date of actual payment.	<u>SAME AS CENTRAL EXCISE.</u> But the period of interest shall be calculated from the first day of the month succeeding the month of due date of payment.
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PENALTY UNDER EXCISE/SERVICE TAX

CASE	SECTION 76 AND SECTION 78 [SERVICE TAX]	SECTION 11AC [CENTRAL EXCISE]	SECTION 28 & 114A [CUSTOMS]
NO FRAUD CASE	SECTION 76: (1) Maximum penalty – 10% of service tax. (In addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding 10% of the amount of such service tax) No penalty: where service tax and interest is paid within a period of 30 days of the date of service of notice u/s. 73(1), no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to have been concluded; [before adjudication]	penalty = upto 10% of the duty so determined or Rs 5,000; whichever is higher. No penalty: same as service tax. Reduced penalty: same as service tax.	Provided that where notice u/s 28(1)(a) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served shall be deemed to be concluded. [proviso to section 28(2) w.e.f

	Penalty reduced to 25% of the penalty imposed in the order: where service tax, interest and also the reduced penalty is paid within a period of 30 days of the date of receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the penalty imposed in that order. [after adjudication] (2) Where the amount of penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of penalty and the period of 30 days will be counted from the date of such order.		14.5.2015].
<u>FRAUD CASE</u> <i>(where any duty/tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.)</i>	Section 78: (1) Penalty shall be 100% of the amount of service tax: (in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to 100% of the amount of such service tax) (2) Reduced penalty: (i) Penalty shall be 50% of the service tax: (where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011. upto 14.05.2015 (both Days inclusive), the penalty shall be 50% of the service tax so determined.) (ii) Penalty shall be 15% of the service tax: (where service tax, interest and	Same as Servicetax	Quantum of penalty [Section 114A] (1) Normally 100% of duty evaded. (2) In case the duty, interest and reduced penalty are deposited within 30 days from the date of communication of the order : 25% of the duty payable. (3) Section 28 (5) : penalty reduced to 25% 15% of duty if duty, interest and reduced penalty is paid within 30 days of receipt of the notice and inform the proper officer of such payment in writing. [w. e. f 14. 5. 2015]. (3) The amount of penalty will increase or decrease if the duty amount is subsequently increased or

	reduced penalty is paid within a period of 30 days of the date of service of notice under the proviso to section 73(1), the penalty payable shall be 15% of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded.) – before adjudication (ii) Penalty shall be 25% of the service tax: (where service tax, interest and reduced penalty is paid within a period of 30 days of the date of the date of receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the service tax so determined.) - after adjudication (3) Where the amount of service tax or penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of service tax and the period of 30 days will be counted from the date of such order.		decreased in appeals. In such a case the benefit of reduced penalty will be availed only when such increased duty, interest and penalty are deposited within 30 days of the determination of increased duty.
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explanation 1.— For the removal of doubts, it is hereby declared that—

(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before 14.5.2015 shall be governed by the amended penalty provision.

(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has been issued but an order determining duty has not been passed before 14.5.2015, shall be eligible to closure of proceedings on payment of duty and interest (voluntary payment) or on payment of duty, interest and reduced penalty, subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within 30 days from 14.05.2015. **[under customs except provisions of sections 135, 135A and 140 all other proceedings deemed to be closed].**

(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining duty under section 11A(10) is passed after the 14.05.15 shall be eligible to payment of reduced penalty under clause (b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within 30 days of the communication of the order.

Section 80 of the Finance Act, 1994 is omitted which provides for waiver of penalty u/.s 76 or 77, in a case of reasonable cause. Hence, w.e.f 14.05.2015 penalty under service tax cannot be waived.

Miscellaneous

UTILIZATION OF CENVAT CREDIT FOR DIFFERENT TYPES OF EXCISE DUTY

EC & SHEC on Excise duty/service Tax

Credit of EC and SHEC on inputs or capital goods or input service received in the factory of manufacture of final

product on or after the 1/3/2015 for excise or premises of service provider on or after 1/6/2015 for service tax can be utilized for payment of the basic excise duty/service tax. [For capital goods: balance 50% of goods received in 2014-15 also allowed]

Note: However, CBEC is yet to provide a clarification on utilization of old unutilised CENVAT Credit on EC and SHEC.

Swachh Bharat Cess

(a) It is levied @ 0.5% on value of all taxable services w.e.f 15.11.2015.

(b) With respect to Swachh Bharat Cess neither CENVAT Credit is available on it nor CENVAT Credit can be utilised for its payment.

PROCEDURES AND CONDITIONS FOR EXPORT TO ALL COUNTRIES EXCEPT BHUTAN WITHOUT PAYMENT OF DUTY [Notification No. 42/2001]

Notification No. 23 /2015, dated 30.10.2015:

One of the procedures is that the exporter shall takes all necessary steps including packages, seal the goods to get the ready for dispatch. However, where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner or Chief Commissioner of Central Excise subject to safeguard as may be specified by him in the permission. The safeguards shall, inter-alia, include the following:-

- (i) method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or despatch and at the port of export or SEZ, where the goods are received;
- (ii) no remission of duty shall be allowed for loss of goods within transit;
- (iii) permission shall be given on case to case basis for a specified period not exceeding one year at a time and may be withdrawn in case of misuse; and
- (iii) any additional safeguards as may be specified.

Circular No. 1006/13/2015-CX, dated the 21th September, 2015: Board circular should not be binding on departmental officer in the following cases–

- (i) Board Circulars contrary to the judgements of Hon'ble Supreme Court should not be followed.
- (ii) The above direction would also apply to the judgements of Hon'ble High Court where Board has decided that no appeal would be filed on merit.

All pending cases decided after the date of the judgement would, conform to the law laid by the Hon'ble Supreme Court or High Court, as the case may be, irrespective of whether the circular has been rescinded or not.

Notification NO. 18/2015, 06.7.2015:

Use digital signature

(i) Only Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India (**Eg. SIFY / E-Mudhra / N-CODE**) shall be used.

(ii) Must intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least 15 days in advance: -

1. name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
2. name of the Certifying Authority;
3. date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:

However, in case of any change in the details submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, complete details shall be submitted afresh within 15 days of such change.

Maintaining and persevering records in e-form

(i) Assessee who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.

(ii) Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

(iii) Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.

(iv) A Central Excise Officer, during an enquiry, investigation or audit, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

Guidelines for launching prosecution under the Central Excise and Service Tax Circular No. 1009/16/2015-CX, dated the 23rd October, 2015.

Monetary Limit:	Prosecution should normally be launch if evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified u/s. 9(1) of the Central Excise Act, 1944 or u/s. 89(1) of the Finance Act, 1994 is equal to or more than Rs.1 Crore. Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility. A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past 5 years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than Rs.1 Crore.
Authority to sanction prosecution	The sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be required. In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the sanction of Principal Director General/ Director General, CEI is required.

Procedure for sanction of prosecution	(i) Department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt. (ii) In the case of public limited companies, prosecution should be launched only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it and not against all directors. (iii) Prosecution should not be launched in cases of technical opinion regarding interpretation of law. (iv) Availability of adequate evidence and standard proof required in a criminal prosecution. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be sufficient to establish the fact for prosecution. (v) Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011(266)ELT 294 (SC)] has <i>interalia</i>, observed the following :- (i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent in nature to each other and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.” Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.
Publication of names of persons convicted:	Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.
Compounding of Offences	Section 9A(2) of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 provides for compounding of offences by the Principal Chief/ Chief Commissioner on payment of compounding amount. All persons against whom prosecution is initiated or

	contemplated should be informed in writing, the offer of compounding.
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Circular No. 1010/17/2015, 23.10.2015: Arrest of a person in relation to offences specified under clause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than Rs.1 crores.

Circular No. 23/2015, 29.9.2015: Refund/Claim of Safeguard Duties as Duty Drawback

(1) With respect to Safeguard Duties which are leviable under Section 8B or Section 8C of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, the Board clarifies that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Safeguard Duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such Safeguard Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This would necessarily mean that drawback shall be admissible only where the inputs which suffered Safeguard Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

(2) Where imported goods subject to Safeguard Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 [Circular No.27/2015, dated 23.10.2015]

Threshold limit for launching prosecution and exceptions:

Baggage and Outright smuggling cases:

Nature	Threshold limits
Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules	CIF value of the goods involved is Rs.20 lakh or more;
Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Customs Act, 1962 or foreign currency	the value of offending goods is Rs.20 lakh or more;

Appraising Cases/ Commercial Frauds:

Nature	Threshold limits
(i) In cases related to importation/exportation of trade goods (i.e. appraising cases) involving- (a) wilful mis-declaration in value/description; (b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962,	CIF/FOB value of the offending goods is Rs.1 crore or more;
(ii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962	if the amount of drawback or exemption from duty is Rs.1 crore or more;

Exceptions:

(i) The above threshold limits would not apply in case of persons indulging habitually in such violations or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. provided the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit.

(ii) The threshold limits would also not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/ business trips etc.) detected at the time of departure back from India, exceeding the threshold limits of Rs.20 lakh, if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently, prosecution need not be considered as a routine.

(iv) Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

Stage for launching of prosecution:

Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution.

(a) In case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(b) In case where arrest has not been made but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is Rs.20 lakh or more.

Further, if the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available. **[by virtue apex court decision in the case of Radheshyam Kejriwal [2011]**

Circular No.28/2015, dated 23.10.2015: Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962

While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, should be effected only in exceptional situations.

(1) Threshold limit of arrest increased: same as prosecution (As discussed above)

However, the threshold limit would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

CASE LAWS FOR JUNE 16

SERVICE TAX

➤ **Haryana Sheet Glass Ltd. (2015)(P&H):**

CENVAT credit on service tax paid on outward transportation of goods cleared from the factory to the buyer's place shall be allowed as the place of removal in the given case in not the factory gate of the manufacturer but that of purchaser.

➤ **[Tandus Flooring India Pvt. Ltd (2014)(AAR):**

[Marketing and support service provided to foreign company by an Indian company for selling of products of foreign company in India. The place of provision of service will be determined as per Rule 3, since it is not covered through any other rules. **Therefore, the service is not taxable in India, since the place of provision of service is in non-taxable territory.**

➤ **Sai Wardha Power Company Ltd (2015)(Bombay):**

Excise Officer is bound to grant Form A-2 after the due approval obtained from the approval committee and verification of Form A-1 by SEZ officer. They cannot refuse on the ground of possible evasion of duty. Note: Assessee required to file application in Form A-1 and thereafter Department is required to grant certificate in Form A-2 for availing ab initio exemption by SEZ.

➤ **IRCTC Ltd. (2014)(SC):** Supply of food and beverages on board the trains amounts to sale of goods and not a service transaction. Therefore, liable for VAT only and not service tax. Here, service element is very small and it is incidental to sale. As soon as goods loaded in the trains and at the time of service the ownership of goods is vest with Indian Railways and not with IRCTC.

➤ **McLeod Russel (India) Ltd (2015)(cal- tri) :** Security service provided by State Govt. (by creating a force Assam Tea Plantation Security Force –ATPSF) to Tea Industries in disturbed areas to maintain the peace is a sovereign function and covered under Negative list therefore service tax shall not be levied on such security fee. It cannot be considered as support service to business entity.

➤ **Discuss whether following are liable for service tax or not –**

- (i) Activity of packaging of various components as CNG Kits along with instruction manual
- (ii) activity of packaging of fertilizer
- (iii) supply of study material by a coaching centre to its students in the course of coaching service
- (iv) Training provided in field of Natural science and Marine Engineering and short term course such as Fire prevention and fire fighting courses etc.
- (v) The bus stand fee or advertisement fee collected by municipality

Answer:

- (i) liable for service tax as it does not amounts to manufacture. **[CEV Engineering Pvt. Ltd (2015)(SC)]**
- (ii) Since, without packaging fertilizer cannot be sold, therefore, the said activity will fall under the purview of manufacture. Therefore, it falls under Negative List under Service Tax. **[New Era Handling Agency (2015)(SC)]**
- (iii) **Forms part of value of coaching fee and cannot be considered as sale of goods** - since these books are neither priced nor available in the open market and its value are included in the coaching fee. Exemption can be given only for standard text books. **[STC Technologies Pvt. Ltd (2015)(Mad- Tri)]**
- (iv) considered as Commercial Training or Coaching services and not as vocational training and hence liable

for service tax **[Academy of Maritime Education & Training Trust (2014)(Mad-Tri)]**

(v) The bus stand fee or advertisement fee collected by municipality liable for service tax as it cannot be considered as statutory activities. Further, the funds are also goes to the Municipality and not to the Government Treasury. **[Kothamangalam Municipality (2014)(Ker- Tri)]**

➤ **Bansal Classes 2015 (Raj. HC):** In the given case, assessee provides commercial training and coaching services to students, organizes celebrations for rewarding successful students and to motivate new students, and avails CENVAT credit by utilizing services such as catering, photography and tents. Assessee also hires examination hall, undertakes maintenance and repair of vehicles and incurs travelling expenses for business tours.

The high court observed that providing catering, photography and tent services to students who have finished their coaching classes cannot be termed as output service.

The assessee could not produce any material to show nexus between Repairs, maintenance of motor car and travelling expenses & commercial training or coaching. Hence, CENVAT credit of the same cannot be allowed.

Conclusion: It was held that that the assessee is eligible for CENVAT credit only with respect to service tax paid on renting of examination hall being an immovable property and disallowed the CENVAT credit with respect other activities.

➤ **Rane TRW Steering Systems Ltd. 2015 (Mad. HC):** Can the assessee get CENVAT credit on the following cases –

Items	Held that
Services tax paid on landscaping, gardening and housekeeping services availed to maintain the factory premises in an eco-friendly manner	Considered as input service under the category of ‘modernisation, renovation, repair etc., of the office premises’. Hence, CENVAT is allowed.

Reason given by the Court

The Court relied on the judgement of Millipore India Pvt. Ltd. The credit rating of a factory depends on how the factory is maintained within as well as outside the factory premises. Further as per environmental laws the assessee is required to maintain the factory in compliance with these laws. The assessee is also required to discharge its corporate social responsibility. Under the circumstances if the manufacturer incurs the cost towards maintenance of factory premises in eco friendly manner then it is a part of the cost of production and hence CENVAT credit is allowable.

➤ **Vijaya Consultants, Engineers and Consultants 2015 (AP):** The Department cannot demand service tax without issuing a proper show cause notice to the assessee merely on the basis of a speaking order and by issuing a letter giving the assessee an opportunity to represent his case.

Section 73 of the Finance Act, 1994 makes it mandatory for the department to issue Show Cause Notice if any amount is not levied, short levied etc. Since, in the given case no such notice was issued therefore the judgement of Tribunal in favor of the assessee is correct. It is further clarified that the letter cannot be treated as Show Cause Notice as it did not contain (i) the alleged amount of service tax to be paid and (ii) the period thereof. The department must adhere to the procedural requirement of issue of SCN and raising demand of tax. The demand of money in the name of tax by issue of letter is in violation of the very procedure prescribed under the Act.

➤ **Delhi Transport Corporation (2015) (Del.):** The service tax burden can be shifted by contractual arrangement to a third party but the assessee cannot ask the department to recover the dues from such third party or cannot ask the department to wait for discharge of his service tax liability until it has collected the tax from such third party.

Facts of the case: The assessee (service providers) has entered contracts with various agencies for display of advertisements on bus queue shelters and time keeping booths. As per the contract the it is the responsibility of the contractor i.e. advertisers to pay service tax directly. A show cause notice was served upon the assessee raising service tax demand, interest and penalty on the service of display of advertisements rendered by it. It was argued by the assessee that it was under a bonafide belief based on the case of Rashtriya Ispat Nigam Limited (SC) that the service tax liability has been transferred through the agreement and therefore it did not file its return and fails to pay service tax.

Held that: The service provided are taxable and there is no dispute that liability to pay service tax is that of the appellant. At the same time, Appellant can rely on Rashtriya Ispat Nigam Limited's case regarding transferring of service tax liability by way of a contract. But, this does not discharge the liability towards Revenue. It further observed that appellant is a public sector undertaking and it should be more serious towards compliance of statutory obligations. So far as the Revenue was concerned the appellant was the assessee and was bound to register itself, file returns and comply with all other service tax procedures. **The service tax burden can be shifted by contractual arrangement to a third party but the assessee cannot ask the department to recover the dues from such third party or cannot ask the department to wait for discharge of his service tax liability until it has collected the tax from such third party.**

➤ **GMK Concrete Mixing Pvt. Ltd (2015)(SC):** The assessee was engaged in preparation of ready mix concrete (RMC) along with ancillary and incidental activities like pouring, pumping and laying of concrete and supplied it to customer. The Department was of the view that activities of pouring etc. was a significant part of the transaction and not incidental transaction, **therefore** the activity performed by the assessee not only consists of sale but also of services which should be subjected to service tax. The tribunal held that agreement to supply RMC does not constitute any taxable service but it is sale transaction. The department filed a further appeal before Supreme Court but the same was dismissed by Supreme Court on the ground that The Finance Act, 1994 is a law relating to provision of services not a law relating to commodity taxation. The contract to supply RMC is purely a transaction relating to transfer of property in goods which is not a service. There is a mistake of fact on the part of the department and the law fails. Accordingly, the appeal was dismissed by the Apex Court.

➤ **Sachin Malhotra (2015)(Uttarakhand High Court):** Different between 'hiring of cab' and 'renting of cab' for the purpose of service tax.

In case of hiring a car, the owner of the vehicle who may or may not be the driver, offers his services to customer but retains the control and possession of the vehicle with himself. He also needs to obtain the permit issued by the Motor Vehicle Department. Here, the customer is only using the vehicle by travelling in it and he is expected to pay the metered charged which is usually collected on the basis of kilometres. However, in case of rent – a-cab, the hirer is gets the freedom to take the vehicle wherever he wishes. He gets the possession and control of the vehicle and he is only required to inform about the movement from time to time to holder of the license.

Hence, in view of the above discussions, they are two different transactions for the purpose of service tax.

➤ **Fitrite Packers (SC)(2015):** In order to cover a process under the definition of manufacture at first there must be transformation in the original article and the transformation should bring out a distinctive or different use in the article.

In the given case, the assessee has purchased duty paid Jumbo rolls of GI paper from the market. Thereafter, it carried out printing as per design and specification of customers with logo and name of product in colourful form.

It was held that GI paper was meant for wrapping and the use thereof did not undergo any change even after printing, as the end use thereof is still same i.e, wrapping/packageing.

However, upon printing of logo and name of the specific product, the end use thereof now confined to only that particular product of the specific company/ customer. This process is not merely a value addition but it transforms a general wrapping paper to special wrapping paper. **Hence, the process performed by the assessee is a manufacturing process.**

➤ **Otto Bilz (India) Pvt. Ltd (2015)(SC):** In the given case, the assessee is using a foreign brand name known as “BILZ”, which is assigned to it by the brand owner with the right to use the brand name in India exclusively. It was held that since the assessee is using the trademark in its own right as its own trademark and therefore it cannot be said that the assessee is using the trademark of another person. **Hence, SSI exemption allowed.**

➤ **Radheshyam Kejriwal (SC): Applicable for Excise, Customs and Service Tax**
(a) adjudication proceedings and criminal proceedings can be launched simultaneously;
(b) decision in adjudication proceedings is not necessary before initiating criminal prosecution;
(c) adjudication proceedings and criminal proceedings are independent in nature to each other and
(d) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.

(15) Spentex Industries Ltd. (SC)(2015): The word “OR” used in rule 18 of the Central Excise Rules, 2002, means “AND”. Therefore, rebate shall be allowed w.r.t both inputs and final products.

Some Significant findings of the Apex Court: Under rule 19 the exporter is not required to pay excise duty either on final product or on raw material. Similarly, under rule 18 it cannot be the intention of the legislations to allow rebate either on final product or on raw material. The intention of the legislature in both the option (i.e in rule 18 and rule 19) is to make export free from any excise duty. If such restrictive meaning

to rule 18 is given, then it would produces an anomalous, invidious discrimination and arbitrary result. It also defeats the very purpose of grant of remission. **Although, as per the general principle the word ‘or’ is disjunctive and the word ‘and’ is conjunctive but to manifest the true intent of the legislature these words are to be read vice versa. Therefore, the word ‘OR’ used in rule 18 of the Central Excise Rules,2002, means ‘AND’.** The Apex Court also referred the order passed by Revision Authority in the same case, that under rule 18 the word ‘or’ should not be given a mere literal interpretation otherwise it will leads to various disastrous results.

Hence, under rule 18 rebate shall be allowed w.r.t both inputs and final products to bring it at par with rule 19.

Note: The case of Rajasthan Textile Millls (2013), where in the High Court held that under rule 18 rebate can be claimed either on excisable goods or on raw material, but not on both is overruled by the Apex court.

➤ **Honda Siel Power Products Ltd. (2015)(SC):** The assessee is not entitled to claim the benefit of exemption notification if one of the conditions of such notification is not followed. The exemption notification are to be construed strictly and even if there is any doubt same is to be given in favour of the Department. The Court held that once it is established that the conditions had not been fulfilled the assessee cannot claim the benefit of exemption notification.

In the given case, in order to avail the exemption, the assessee was required to pay its duty either in cash or through PLA but the assessee utilised CENVAT credit for discharge of its liability. **It was held that the benefit of exemption notification shall not be available to the assessee.**

➤ **Ceat Limited (2015)(Bombay High Court):** No interest under rule 7(4) shall be payable in case of provisional assessment if the differential duty is paid in full before the order of final assessment.

The assessee had cleared manufactured goods on provisional basis but later on it paid the differential duty on self- calculation basis before final order came. The Department demanded interest on such differential duty paid by the assessee as per rule 7(4) of the Central Excise Rules, 2002 without contending that the duty so paid before final assessment was not correct/ accurate/ properly computed.

The appellant was of the view that interest under rule 7(4) shall be levied only after passing of final order. Since it had paid differential duty before passing of final order and the finalisation of provisional assessment had not resulted into any additional liability, therefore no interest shall be payable as per rule 7(4).

The Court agreed with assessee's view and observed that since the final assessment resulted nothing due and payable to the Government, therefore interest under rule 7(4) shall not be attracted. Further, in absence of any specific provisions in rule 7(4), no interest shall be levied w.r.t differential duty paid prior to finalization of assessment order. Had it been the intention of the legislation the same would have been specifically provided.

➤ **Chakiat Agencies vs. UOI (2015)(Madras):** Appeal filed in time but given to wrong authority mistakenly could not be rejected being time barred by the appellate authority.

An assessee filed an appeal before commissioner (Appeal) but mistakenly it was given to Adjudicating authority (who had passed the original order). Although the appeal was in time when received by Adjudicating authority but it was not received in time by the appellate authority in its office. The appellate authority had rejected the appeal on the ground of being time barred.

It was observed that, the appeal had been filed in time but reached different wing of the same building and was received by the adjudicating officer. It was the adjudicating authority who ought to have sent it to the appellate wing of the same building before time but he had not done that.

In a similar case, of Radha Vinyl Pvt. Ltd., the appeal had been addressed to wrong officer and department had agreed that the appeal was pending before it and the Court held that the correct course of action should be either they returned it to the appellant to enable him to file before the appropriate authority or should have handed it to the competent authority.

It was evident that the department had not followed the proper course of action. The Court directed the appellate authority to admit the appeal, give opportunity of being heard to the assessee and pass suitable orders.

➤ **Sanjay Industrial Corporation (2015)(SC):** Extended period of limitation cannot be invoked in a situation where the revenue authorities are themselves in doubt regarding dutiability of a product.

The appellant was engaged in the process of cutting the larger plates into smaller size as per the customer's specification and supplied it (known as profile cutting). No excise duty was paid by the appellant on the ground that the said process did not amount to manufacture. However, the Department issued a show cause notice by invoking extended period of limitation u/s. 11A by treating it as a case of suppression and misrepresentation of facts and demanding excise duty and penalty on the ground that the said process amounts to manufacture.

The appellant stated that there is no suppression or misrepresentation by it. By referring the order of Commissioner, in the case of M/s. Pioneer Profile Industries (Pune) argued that, in that case it was held that although the process of profile cutting amounts to manufacture but penalty could not be levied on the ground that the department itself was in doubt earlier that the said process amounts to manufacture or not.

Accordingly, The Apex court set aside the penalty order and held that since the department was earlier itself in doubt in a similar issue regarding the excisability of the said process, the bonafideness of the appellant could not be doubted if the assessee also had the same belief. Hence, it could not be a case of willful suppression of facts.

➤ **Bharti Airtel Ltd. (2014)(Bombay High Court):**

Issue: Whether the assessee a cellular telephone service provider eligible to get CENVAT credit on excise duty paid on Base Transceiver Station (BTS) consisting of tower, GSM or Microwave Antennas, Prefabricated building (PFB), isolation transformer, electrical equipments, generator sets, feeder cables etc. under the claim that all such items are part of a "composite system" falling under chapter 85.25 of the CETA, thereby covered under the definition of capital goods rule 2(a) or alternatively fall under rule 2(k) as inputs?

Facts: The department allowed credit on antennas but did not allow credit on other items such as - towers and part thereof and the PFB. The tribunal accept the view expressed by Department.

Decision of the High Court:

- (i) The various components of BTS can function independently; therefore it cannot be classified as a composite system under the heading 85.25 to be considered as capital goods. Hence, it will not fall under clause (i) of rule 2(a)(A) of CENVAT Credit Rules.
- (ii) Not all components, parts etc. are considered as capital goods under rule 2(a)(A)(iii). Only Components, spares and accessories of the goods specified at (i) and (ii) of rule 2(a)(A) and used for providing output service can be considered as capital goods.
- (iii) The argument of appellant that the tower is an accessory of antenna is not acceptable on the ground that antenna could be installed without tower. Further, it also cannot be considered as a part of antenna. A part is

necessary to complete a finished product. The antenna itself is a complete product and the towers are structures fastened to the earth on which the antennas are installed and hence, it would be misconceived and absurd to accept the tower as a part of the antenna. Hence, towers and part thereof and the PFB should not fall under the definition of capital goods.

(iv) Even though towers and part thereof received in CKD and SKD conditions, they fall under chapter heading 7308 of the CETA, hence not specified in clause (i) of rule 2(a)(A) of CENVAT Credit Rules to be treated as capital goods.

(v) The other contention that “all goods used for providing output service” is an input as per rule 2(k), thereby credit on the towers etc. must be allowed also shall not be accepted on the ground that towers and PFB are not “goods” since they are immovable structures and non-marketable and non-excisable.

(vi) Hence, PFB, towers and parts thereof should neither be considered as capital goods nor to be considered inputs, for the purpose of allowing CENVAT credit.

Associated Hotels Ltd. (2015)(Gujarat High Court): The Commissioner (Appeal) has the power to remand back (set aside for fresh consideration) a case related to service tax to the adjudicating authority u/s. 85 with proper reason.

The department was of the view that the Commissioner (Appeal) under Excise cannot do so as the said powers was taken away by virtue of amendments in section 35A(3) in the year 2001. Further, for matter related to service tax as per section 85(5) of the Finance Act, 1994, the Commissioner (Appeal) follows the same procedure and exercises the same power as contained in Central Excise Act, 1944, hence the Commissioner (Appeal) does not have the power to remand back a service tax case to the Adjudicating authority as the provisions of Central Excise should be followed.

However, the High Court observed that the provisions of section 85(4) of the Finance Act, 1994 is very broad. It states as under:

> The Commissioner of Central Excise (Appeals) shall hear and determine the appeals and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

> Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944.

Therefore, it has inherent power to remand back a case to the adjudicating authority for proper reasons by virtue of section 85(4). The Court did not accept the argument of department based on section 85(5) on the ground that section 85(5) starts with the word “subject to the provisions of this chapter”. Therefore, Section 85(4) overrides section 85(5).

Note: same view was expressed by the Delhi High Court in the case of World Vision (2011).

CUSTOMS

➤ **Mangalore Refinery & Petrochemicals Ltd. 2015 (323) (SC):** In case of import of crude oil the actual quality received in Indian port should be the basis for payment of customs duty and not the quantity shown in the bill of lading. As per the charging Section 12 the levy of customs duty is only on goods imported into India. Goods can be said to be imported only if brought to India. Hence, the quantity of goods imported into India will be the quantity that are entered for home consumption.

Facts of the Case:

(1) On account of ocean loss, the quantity of crude oil actually received into the shore tanks in India was

lesser than the quality shown in the bill of lading.

(2) The Department contended that since duty was levied on an ad valorem basis and not on a specific rate, therefore the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty.

(3) The Tribunal also agreed with the Department's view and held that duty should be levied on the total payment made by the assessee irrespective of the quantity received.

Significance observation made by the Apex court:

(i) **In case of import of crude oil the actual quality received in Indian port should be the basis for payment of customs duty and not the quantity shown in the bill of lading. As per the charging Section 12 the levy of customs duty is only on goods imported into India. Goods can be said to be imported only if brought to India. Hence, the quantity of goods imported into India will be the quantity that are entered for home consumption.** Import duty can be levied only on imported goods and till that is done, there is no charge to tax. The chargeable event in the case of imported goods is "import". The quantity of goods stated in a bill of lading reflects the purchase transaction and not the quantity of goods at the time and place of importation.

(ii) As per sections 13 and 23 where imported goods are lost, pilfered or destroyed, no import duty is leviable. This clears that at the stage when goods are received by the importer is to be looked at for the purposes of valuation.

(iii) Customs duty whether at a specific rate or ad valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. Whether customs duty is at a specific rate or is ad valorem does not make the least difference to the statutory scheme.

(iv) Hence, in the given case, the actual quantity received in Indian port should be the basis for payment of customs duty.

➤ **Aidek Tourism Services Pvt. Ltd. (2015)(SC):** Additional Duty of Customs / CVD u/s. 3(1) shall not be payable if the excise duty on a like article is exempted if produced or manufactured in India. The Apex Court held that, the rate of CVD u/s 3(1) of CETA, 1975 shall be the rate that would be payable under the Central Excise Act, 1944 on a like article. Therefore, if any notification is issued providing exemption or remission of excise duty in relation to a like article if produced or manufactured in India, then the importer is liable to pay concessional or reduced or nil rate of CVD on such imported goods.

➤ **Parimal Ray (2015) (Calcutta High Court):** The time limit of refund application u/s. 27 of the Customs shall be applicable only on duty or interest excess paid and not money (not in the nature of duty or interest) wrongly paid.

In the given case the petitioner paid a large amount of customs duty due to wrong classification on import of tunnel boring machines which were otherwise fully exempted from custom duty. The petitioner filed a writ petition claiming the refund of the amount so paid after expiry of more than 3 years. The refund claim was rejected on the ground that no application has been filed within one year of payment of duty u/s. 27.

The High Court observed that, section 27 applicable only in case of excess amount being in the nature of duty or interest is paid but in the given case the amount so paid was not a duty/ interest as the duty was fully exempted. Therefore, the amount so paid to Government is rightly called money paid mistakenly by one person to another which the other person is under obligation to repay u/s. 72 of the Indian Contract Act, 1872. Hence, when a wrong is continuing there is no limitation for instituting a suit complaining about it.

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