Highlights of the budget 2009-10 as applicable to service tax

I. <u>NEW SERVICES UNDER THE TAX NET</u>

1) Medical Services

Services of cosmetic surgery or plastic surgery. However surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma shall be exempt.

2) <u>Transport other than surface transport</u>

The following Transport services in relation to transport under sub clause (zzzzl) have been made taxable

(i) Coastal goods;

(ii) Goods through national waterway; or

(iii) Goods through inland water.

3) <u>Legal consultancy service</u>

Any advice, consultancy or assistance in any branch of law provided by a business entity to any other business entity. Any service provided by way of appearance before any court, tribunal or authority shall not be treated as taxable service. Business entity does not include and Individual.

(**Important**: The above changes will come into effect from a date to be notified, after the enactment of Finance (No. 2) Bill, 2009.)

II. <u>EXTENTION OR ALTERATION OF SOME EXISTING SERVICES</u>

1) The services of sub-broker covered under Section 65(105)(a) have been exempted from service tax.

2) Transportation services in relation to transport of goods by rail has been made taxable.Presently, transportation of goods in containers by rail, by other than Government railways is taxable under section 65(105)(zzzp) since 2006. It is now proposed to impose service tax on goods transported by railways including Government railways, whether in containers or otherwise. Suitable abatement and exemption is expected soon.

<u>Important:</u> Railway Minister Ms. Mamta Benegri budgeted NO INCREASE IN RAILWAY FREIGHT. However the Finance Minister has levied <u>10% Service Tax</u>

<u>on freight of railways</u>. This levy is bound to lead to inflation as the prices of all the goods required for infrastructure development like Cement, Iron & steel etc. are bound to increase. Moreover the Petroleum Minister has already hiked the fuel prices. Is this the way our government plans to provide a booster to the economy ?.

3) "Under Business Auxiliary Service" only those processes, which result in the manufacture of '**excisable goods'** shall henceforth be excluded from the purview of BAS. Processes resulting in manufacture of goods which are not excisable shall now not be exempt from service tax.

4) The definition of Information Technology Software Service has been altered so as to shift the base of taxation from "Acquition " of the right to use information technology software service for commercial exploitation to the "Provision" of the same. (w.e.f. 16-05-2008) (The amendment was necessary ab initio as it was an inadvertent mistake)

(The above changes will come into effect from a date to be notified, after the enactment of Finance (No. 2) Bill, 2009.)

III. <u>RESTRICTIONS/EXENTION OF POWERS</u>

a) At present under section 84 of the Finance Act 1994 the Commissioner of Central Excise has the power of revision of O-I-O passed by an adjudicating authority subordinate to him.This provision now stands abolished and in its place a provision has been made for filing departmental appeals before the Commissioner (Appeal).

b) Section 94 of the Finance Act 1994 has been amended to empower the Central Government to frame rules with respect to the place of provision of taxable services; and with respect to the relevant date for determination of the rate of service tax. (These powers are not available as yet).

(The above changes would come into effect from the date of the enactment of the Finance (No. 2) Bill, 2009.

IV. <u>AMENDMENTS IN THE RULES AND EXISTING NOTIFICATIONS</u>

1) By notification No. 1/2002–ST dated 01.03.2002 the Central Government exempts the taxable services provided, by Government of Rajasthan under Group Personal Accident Scheme, to its employees in relation to general insurance business, from whole of the service tax leviable thereon under section 66 of the said Act. The scope of this notification has been enlarged by extending the applicability of service tax provisions to installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zones of India. (Noti.No. 21/2009-07-07-2009).

2) At present there is a provision in Rule 5B in the Cenvat Credit Rules 2004 that If the value of any,input, or capital goods before being put to use, on which cenvat has been taken is written off fully or where any provision to write off fully has been made in the

books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods .

3) This rule has been amended to make it applicable to a SERVICE PROVIDER also.(Earlier it was restricted to only manufacturer under the Excise Acts and not to Service Providers).

4) An assessee providing both taxable and exempted services, who does not maintain separate accounts of inputs shall now pay an amount equal to 6% of the value of exempted services instead of 8%.

5) An assessee enjoying the benefit of optional composition scheme has now got a rider. At present the works contractor has the option of either paying 10% of the service element in the value of the contract or pay 4% on the gross amount charged for the contract.This benefit shall now be available only to such works contracts where the taxpayer declares the entire value of goods and services used in the execution of the works contract as the 'gross value'charged for the works contract.The gross value shall not include VAT on transfer of materials and the cost of capital assets (except hire charges, in case of hire) . This benefit of composition shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

(This restriction would not apply to current works contracts where either the execution has commenced or any payment has been made on or before 07.07.2009.

The changes mentioned in S. Nos. (1) to (4) above will come into effect immediately.

6) Goods Transport Agents (GTAs) receive several services from other service providers (such as warehouse keeper, cargo handlers, C&F agents) during the movement of goods, en-route. While these individual services are taxable at the hands the service providers, the GTA cannot take credit of tax paid on such services, as the abatement allowed to them is subject to condition that no credit should be availed. This exemption given to persons providing specified services to goods transport agency is being given retrospective effect from 1st day of January, 2005.(This exemption will come into effect the date of enactment of Finance Bill, 2009). This provision is being given effect to through the Finance (No. 2) Bill, 2009 and will come into effect from the date of enactment of the said Bill. The services covered are as under:

(j)	Clearing and forwarding agent
(k)	Manpower recruitment or supply agency
(zr)	Cargo handling agency
(zza)	Storage or warehouse services
(zzb)	Business auxiliary service;
(zzzf)	Packaging activity;
(zzzq)	Support services of business or commerce
(zzzzj)	Supply of tangible goods without transferring possession or control

V. NEW EXEMPTIONS

a) Exemption from service tax (leviable under Club or Association Service (zzze)) is being provided to the Federation of Indian Export Organizations (FIEO) and specified Export Promotions Councils. The exemption is valid till 31.03.2010. (Noti. 16/2009/07-07-09)

b) The following taxable services received by an exporter of goods and used for export of goods shall be fully exempt (.i.e.100% exemption) from the charge of service tax subject to conditions specified in the notification. (Notification No.17/2009 – Service Tax (07-07-09))

Sr.No.	Sub-Clause	**Taxable Services**
1.	(d)	General insurance business
2.	(zn)&(zzl)	Port Services
3.	(zzh)	Technical Testing & Analysis
4.	(zzi)	Technical inspection and certification
5.	(zzp)&(zzzp)	Transport services from inland container depot to port/airport
6.	(zzzd)	Specialized Cleaning Services.
7.	(zza)	Storage & Warehousing Services
8.	(f)	Overseas Courier Services
9.	(h)	Custom House Agent Services
10.	(zm) & (zzk)	Collection of export bills, Forex changing, Letter of credit
11.	(zzzzj)	Supply of tangible goods without transferring possession or control
12.	(j)	Clearing & Forwarding Agent Services
13.	No Specific Clause	Terminal Handling Services

Conditions:

(a) The exemption shall be claimed by the exporter for the specified service received and used by him for export of the said goods

(b) The exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified service used for export of the goods.

(c) The exporter claiming the exemption has actually paid the service tax on the specified service to its provider.

(d) No CENVAT credit of service tax paid on the specified service used for export of the goods has been taken under the CENVAT Credit Rules, 2004;

(e) The claim for refund shall be filed within one year from the date of export of the goods.

(f) No refund claim shall be allowed if the same is for an amount less than rupees five Hundred.

(g) If the total amount of refund sought under a claim is upto 0.25% of the total FOB Value of export, then the claim documents can be self certified.

(h) If the total amount of refund sought under a claim is more than 0.25% of the total FOB Value of export, then the claim documents shall be certified by the statutory auditors /Tax auditors of the company.

(i) If any refund of service tax has been given but the sale proceeds in respect of the goods have not been realised within the period allowed under FEMA then such service tax refunded shall be recoverable.

c) The following taxable services received by an exporter of goods and used for export of goods shall be fully exempt (.i.e.100% exemption) from the charge of service tax subject to conditions specified in the notification. (Notification No.18/2009 – Service Tax (07-07-09))

Sr.No.	Sub-Clause	**Taxable Services**
1.	(zzp)	Transport services from inland container depot to port/airport
2.	(zzb)	Overseas Commission Agent

Conditions:

(a) The exporter shall produce consignment note in his name.

(b) The commission shall not exceed 1% of the FOB value

(c) The export documents shall be issued in the name of the exporter, showing that the exporter is liable to pay the service tax .

(d) The exporter shall not take Cenvat credit of the service tax paid on the specified services used for export of the goods under the CENVAT Credit Rules, 2004;

d) The taxable services of Banking and Financial institution in relation to banking and other financial services (zm) and

e) Foreign exchange broker services (zzk)

provided to a Scheduled bank, by any other Scheduled bank, in relation to inter-bank transactions of purchase and sale of foreign currency, are exempt from the whole of the service tax leviable thereon under section 66 of the said Finance Act. Notification No.19/2009 – Service Tax (07-07-09)

f) The services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit **is being fully exempted** from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire(Notification No.20/2009 – Service Tax (07-07-09)

g) By notification No. 1/2002–ST dated 01.03.2002 the Central Government exempts the taxable services provided, by Government of Rajasthan under Group Personal Accident Scheme, to its employees in relation to general insurance business, from whole of the service tax leviable thereon under section 66 of the said Act. The scope of this notification has been enlarged by extending the applicability of service tax provisions to installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zones of India. (Noti.No. 21/2009-07-07-2009)

VI. REFUND SCHEME FOR EXPORTERS

Notification No. 41/2007-ST dated 06.10.2007 provides for refund of service tax paid on services, which though not in the nature of input services, are relatable to export of goods. The scheme is being revamped to ensure speedier grant of refunds to the exporters. The salient features of the new scheme, being notified under two notifications, both dated 07.07.2009, are as follows:

(a) Two taxable services, namely, 'Transport of goods by road' and 'Commission paid to foreign agents' have been exempted from the levy of service tax, if the exporter is liable to pay service tax on reverse charge basis. However, as the present cap of 10% on commission agency charges has been retained, the exporter will have to pay service tax on the amount of commission which is in excess of 10%.

(b) Terminal Handling Charges' is being added to the list of eligible services.

(c) The time period for filing a refund claim is being increased to one year from the date of export.

(d) The condition for filing refund claims once in a quarter is being dispensed with. Now the exporter can file a refund claim anytime after each export shipment.

(e) Self-certification is being introduced to ensure faster sanction and disbursement of refunds. In a case, where total amount of refund claim does not exceed 0.25% of the total f.o.b. value of exports under a claim, a self-certification by the exporter on the relevant documents to the effect that: (a) the eligible services have been received by him; (ii) the service tax payable thereon has been reimbursed; and (iii) such services have been used for the export, would be sufficient.

(f) The refunds shall be granted within one month without any pre-audit.

(g) In a case, where amount of refund claim exceeds 0.25% of the f.o.b. value of exports, the documents submitted by the exporter should be certified by the chartered accountant, who audits his annual accounts. On the basis of such certification, the refund claim shall be sanctioned within one month without any pre-audit.