Tax Talk

The Monthly Service Tax Bulletin

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Editorial

General Budget 2014-15 has been laid down by the Hon'ble Finance Minister Sri Arun Jaitley on 10.07.2014. Though the common man may take the Budget with the true spirit of enjoying **"acche din"** in future, it is beyond any doubt that this budget will not bring the so-called **"acche din"** for service tax assessees. We would like to enlighten the readers with the changes in service tax brought by the Budget, through this issue.

Service Tax has shown the highest rate of growth among indirect taxes, in recent times. In the current fiscal year, the Government envisages to collect about Rs 2.16 lakh crore from taxes on services, up by about 31 percent, from Rs 1.65 lakh crore in 2013-14.

The Hon'ble Finance Minister also assured that the Government will not ordinarily bring about any change retrospectively which creates a fresh liability. He conveyed to the investors community at large that the Government is committed to provide a stable and predictable taxation regime that would be investor friendly and spur growth. Therefore, we can hope new circulars and notifications coming up in near future will clarify the existing litigations and extend more benefits.

The Hon'ble Finance Minister had vocalized that changes in respect of service tax have been kept minimal at this stage (with an objective to prepare the indirect tax regime for a smooth transition to Goods and Services Tax). However, as a matter of fact, the changes are numerous and harsh to a great extent.

DUE DATES

PAYMENT	Form	Due Date
Payment for Month ending July 2014 (assessees other than individual, proprietorship firm, partnership firm and LLP)	Cash/Cheque	5th August, 2014
	E-payment	6th August, 2014

Note: Please opt for e-payment if your tax liability during the F.Y. 2013-14 was more than Rs.1 lakh (Challan + Credit), else penalty of Rs. 10,000/- may be imposed.

There are proposed changes in the Finance Act, 1994 which would come into effect only from the date on which the Bill receives the assent of the President except few amendments, which would come into effect on a date to be notified after the Bill receives the assent of the President. Changes by way of notification have specific date of applicability provided in the notification itself.

On GST front, the Hon'ble Finance Minister asserted that the debate whether to introduce a Goods and Services Tax (GST) must now come to an end. He added, "I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST. This will streamline the tax administration, avoid harassment of the business and result in higher revenue collection both for the Centre and the States. I assure all States that Government will be more than fair in dealing with them." We all can only wish that the Government finds the solution at the earliest, to expedite its introduction.

The Lok Sabha has passed the Finance Bill on 25.07.2014 with modification in the provision related to mandatory pre-deposit, in case of appeals. The amended provision has been provided in Page 3. Moreover, as per information available, the same is also passed by the Rajya Sabha and is heading towards its assent from the Hon'ble President of India and is expected to be enacted within a day or two. This will be the fastest ever enactment of the Finance Bill as far as our memory goes. It suggests that the Government has not given sufficient time to industry to give them post budget memorandum/suggestions.

We feel that this Budget has had a direct hit on few fronts. Like, for the common man, travelling in AC bus and radio taxi will become costlier. Cost of School/Colleges will go high in cases where they are having rented premises. Also, advertisement of products/services other than in print media would become dearer.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestions/opinions of the readers. Please feel free to convey your views at servicetaxgoyal@gmail.com.

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Service Related Changes

A. Tax Base Widened – Negative List (Effective from a date to be notified after the Finance Bill receives assent of the President)

1) **Sale of space or time slot for advertisement**: Proposed that selling of space for advertisements in print media (only) would remain in the Negative List. Advertisement in any other form will be taxable. Print media has been defined as book (excluding business directory, yellow pages and trade catalogues) and newspaper.
2) **Transport of passengers by radio taxi/radio cab**: Proposed to include service provided by radio-taxis under the Service tax net by excluding it from the scope of "metered cab". The abatement of 60% would also be made available to radio taxi service, subject to non-availment of cenvat credit on capital goods, input and input services.

B. Tax Base Widened – Mega Exemption (Effective from 11.07.2014)

1) **Transport of passengers in contract carriage**: Exemption is now restricted only to non-Air-Conditioned contract carriage, thereby making Air-Conditioned contract carriage taxable. An abatement of 60% will be available subject to non-availment of cenvat credit on capital goods, input and input services.
2) **Technical Testing & Analysis**: Exemption for technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by an approved clinical research organization, has been withdrawn.
3) **Carrying out Municipal Function**: Exemption is now restricted to services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation, provided to Government or Local Authority or Governmental Authority, making other services such as consultancy, designing, etc. taxable.
4) **Service to Educational Institution**: Exemption in respect of renting of immovable property service provided to educational institution and auxiliary education services has now been withdrawn. Now, it is restricted to -
   (i) transportation of students, faculty and staff;
   (ii) catering, including any mid-day meals scheme sponsored by the Government;
   (iii) security or cleaning or house-keeping services
   (iv) services relating to admission to, or conduct of examination.

C. New Exemption – Mega Exemption (Effective from 11.07.2014)

1) **Transportation by Rail**: Exemption list now includes (a) Cotton, whether ginned or baled and (b) Organic Manure.
2) **Transportation by Vessel**: Exemption list now includes (a) Cotton, whether ginned or baled and (b) Organic Manure.
3) **Transportation by Road**: Exemption list now includes (a) Cotton, whether ginned or baled and (b) Organic Manure.
4) **Service of Cargo Handling**: Exemption for services by way of loading, unloading, packing now extended to ginned or baled cotton.
5) **Service of Storage or Warehousing**: Exemption for storage or warehousing service is now extended to ginned or baled cotton.
6) **Life Insurance Service**: Exemption for services of life insurance business is extended to life micro-insurance product upto Rs.50,000.
7) **Tour Operator Service**: Exemption is provided for services provided to a foreign tourist for tour conducted wholly outside India.
8) **Service received by RBI**: Exemption is provided for services received from outside India in relation to management of foreign exchange reserves.
9) **Waste Treatment Service**: Exemption is provided to operators of the Common Bio-medical Waste Treatment Facility for treatment or disposal of bio-medical waste or the processes incidental thereto for clinical establishment.

D. Service Added – Reverse Charge (Effective from 11.07.2014)

1) **Director of Body Corporate**: Director service provided to body corporate is brought under reverse charge (earlier it was only for companies).
2) **Recovery Agent Service**: Recovery Agent service provided to Banks, Financial Institutions and NBFC is brought under reverse charge (100% Service Tax payable by service recipient).

E. Amendment – Reverse Charge (Effective from 01.10.2014)

Rent-a-cab operator: The percentage of service tax payable on non abated value will change to 50% each for both provider and receiver.

F. Clarifications Provided

1) **Service by Educational Institution**: A new entry is provided in the Mega Exemption Notification for the services provided by an educational institution to its students, faculty and staff. The scope of exemption remains the same since this activity was already covered in the Negative List.
2) **Accommodation Service** : Clarification is provided that exemption is available to any entity including dharmashala or ashram etc having declared tariff of a unit of accommodation below Rs. 1000 per day.
3) **Transportation by Road**: Condition for availing abatement in case of GTA service is amended to clarify that service receiver can claim abatement without having obtained non-availment of Cenvat Credit certificate from service provider.

G. Amendment – Abatement List

1) **Renting of Motor Cab**: Cenvat credit on input service of renting a motor cab will be allowed. Full cenvat credit allowed when abatement has been taken by service provider. While, in case where abatement is not availed, the cenvat credit eligibility will be restricted to 40% of value of input service.
2) **Tour Operator Service**: Tour Operator service providers will be allowed to avail CENVAT credit on the input service of another tour operator only. Credit of others still restricted.
3) **Transportation of goods by Vessel**: The percentage of abatement will increase from 50% to 60%. If abatement is taken then the CENVAT credit will be restricted in respect of capital goods, inputs and input services.
4) **Transport of passengers by Radio Taxi**: An abatement of 60% will be provided on the condition that the CENVAT credit will be restricted in respect of capital goods, inputs and input services.

Point 1, 2 and 3 will be applicable w.e.f. 01.10.2014 and point 4 from a date to be notified after enactment of the bill.

Other Changes

A. Amendment - Valuation Rules (Effective from 01.10.2014)

Works Contract Service: The percentage of service portion in case of other works contracts including works contract, for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, will be increased from 60% of the gross amount charged to 70%.

B. Amendment - Place of Provision Rules (Effective from 01.10.2014)

1) **Hiring of vessels and aircraft:** The place of provision for service consisting of hiring of means of transport upto a period of 1 month is presently the location of service provider. Service of hiring of aircraft and vessels (excluding yachts) will be excluded from its scope. Accordingly, this activity will be covered by the general rule, that is, the place of provision will be the location of the service receiver.

2) **Business Auxiliary Service:** A major relief provided to exporter of goods taking service from foreign commission agent with an amendment of the definition of intermediary to include the intermediary of goods in its scope. Accordingly, place of provision will change to location of service provider. Thus, we feel Notification No. 42/2012-ST dated 29.06.2012 will be rescinded, thereby dispensing with the compliances formalities.

3) **Repair or Maintenance Service:** Place of provision of service for performance based services is the location where services are performed. As per amended provision, service provided in respect of the goods imported for repair and exported after repair without being put to any use other than which is required for such repair, will be governed by general rule i.e. location of service recipient.

C. Amendment-Service Tax Rules (Effective from 01.10.2014)

1) **E-payment** will become mandatory for all. However, the AC/DC having jurisdiction, may for reasons to be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking.

2) **Rates of interest** for delayed payment of Service Tax will be increased as follows:

Period of delay	Rate of simple interest
Up to 6 months	18 %
More than 6 months and up to 1 year	18% for the first 6 months of delay and 24% for the delay beyond 6 months.
More than 1 year	18% for the first 6 months of delay; 24% for the period beyond 6 months up to 1 year and 30% for any delay beyond 1 year.

3% concession will be available to small service providers having taxable turnover upto Rs. 60 lacs in the preceding financial year.

D. Amendment - Point of Taxation (Effective from 01.10.2014)

The point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued on or after 01.10.2014.

A new Transitional Rule 10 to be inserted which provides that if the invoice in respect of a service, for which point of taxation is determinable under Rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall–

(a) if payment is made within a period of six months of the date of invoice, be the date on which payment is made;

(b) if payment is not made within a period of six months of the date of invoice, be determined as if Rule 7 and this rule do not exist.

E. Amendment - Finance Act, 1994 (Effective from the date on which the Bill receives the assent of the President)

1) **Time limits for adjudication:** Proposed to prescribe time limits for completion of adjudication: (i) 6 months from date of notice, in bonafide cases and (ii) 1 year from date of notice, in malafide cases. This time limit would need to be followed, as far as possible. [Section 73(4B)]

2) **Removal of power to waive penalty:** Proposed to exclude Section 78(1) from the power to waive penalty under Section 80.

3) **Search and seizure:** Proposed that Joint Commissioner or Additional Commissioner or any other officer notified by the Board can authorize any Central Excise Officer to search and seize. [Section 82(1)]

4) **Power to recover dues:** Proposed to provide power to recover dues of a predecessor from the assets of a successor purchased from the predecessor. [Section 87]

5) **Amendment in Central Excise Act, 1944** also applicable to service tax

i. **Retrospective applicability:** Any explanation inserted in a notification or special order at any time within one year of issue of notification or order, for clarifying the scope or applicability thereof, shall have effect from the date of issue of such notification or order. [Section 5A(2)]

ii. **Furnishing of information return:** Third party sources shall furnish periodic information, as specified, in the manner as may be prescribed. [Section 15A]

iii. **Failure to provide information return:** Failure to provide information return will attract penalty of Rs. 100/day. [Section 15B]

iv. **Mandatory fixed pre-deposit:** A mandatory fixed pre-deposit has been prescribed :

- 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute for filing of appeal before the Commissioner (Appeal) or the Tribunal at the first stage, and
- 10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute for filing second stage appeal before the Tribunal.

The amount of pre-deposit payable would be subject to a ceiling of Rs 10 crore. [Section 35F]

v. **Interest on pre deposit:** Earlier, interest on delayed refund of pre deposit was prescribed @6% per annum on such amount, after the expiry of three months from the date of communication of the order of the Appellate Authority, till the date of payment of such amount. It is proposed to substitute this provision to provide that interest on delayed refund of pre deposit will be paid at a rate, not below 5% and not exceeding 30% per annum, on such amount from the date of payment till, the date of refund of such amount. [Section 35FF]

Amendment in Cenvat Credit

1. **Time Limit of Input Services in case of Reverse Charge**

   Time period for availing the credit of input service by the recipient of taxable service paying service tax under full and partial reverse charge is clearly specified now, as under:

   (i) In case of full reverse charge, the credit shall be allowed after the service tax is paid.

   (ii) In case of partial reverse charge, the credit shall be allowed after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice.

2. **Definition of "Place of Removal"** has been inserted in Cenvat Credit Rules, 2004.

3. **Re-credit of CENVAT** credit reversed on account of non-receipt of export proceeds within the specified period or extended period to be allowed, if export proceeds are received within one year from the period so specified or extended period on the basis of documentary evidence of the payment so received.

4. **Transfer of credit** by a large taxpayer from one unit to another has now been disallowed, if credit is taken on or after 11.07.2014 by any registered premises.

5. **Credit of Input and Input Services**

   Time limit of 6 months will be applicable for availment of CENVAT credit on input and input services by manufacturer or the provider of output service. Such credit shall not be taken after six months of the date of issue of invoice, bill or challan.

Point 1, 2, 3 and 4 is applicable from 11.07.2014 and point 5 will be applicable from 01.09.2014. (Notification 21/2014 - Central Excise (N.T.) dated 11.07.2014)

6. **Input Service Distributor**

   Clarification has been issued to explain the amendment made vide Notification No. 05/2014- C.E. (N.T.) dated 24.02.2014 applicable from 01.04.2014 in Rule 7(d) of the Cenvat Credit Rules, 2004.

(Circular No. 178/4/2014-ST dated 11.07.2014)

Other Changes

- SEZ procedures simplified (Notification 07/2014-ST dated 11.07.2014).
- Advance Ruling also extended to a resident Private Limited Company. (Notification No. 15/2014-ST dated 11.07.2014)
- Settlement Commission renamed as "Customs, Central Excise and Service Tax Settlement Commission" and area expanded. (Amendment in Sections of Central Excise Act, 1944 applicable to Service Tax)
- New post created of Principal Commissioner and Chief Principal Commissioner. (Section 2(b) of Central Excise Act, 1944)
- ESI will get retrospective exemption for the period prior to 01.07.2012. (Section 100 of the Act)
- Provision with respect to rate of exchange amended. (Section 67A of the Act)

BOOK POST

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