Part I : Statutory Update – Indirect Tax Laws

From 01.05.2013 to 30.04.2014

SERVICE TAX UPDATES

The study material with you is updated with changes upto 30-04-2013.

We are talking about the changes in the law during 01.05.2013 to 30.04.2014

The coverage in your material is as under

Chapter – 1 = Basic Concepts of Service Tax (Sections 64, 65B, 66B, 66D,66E, 66F, 67A)

Chapter – 2 = Place of Provision of Service

Chapter – 3 = Point of Taxation

Chapter – 4 = Valuation of Taxable Service

Chapter – 5 = Exemptions and Abatements

Chapter – 6 = Service Tax Procedures (payments, returns etc.)

Chapter – 7 = Demand, Adjudication and Offences

Chapter – 8 = Other Provisions

Changes in the Law

- Finance Act (last relevant changes thru Finance Act, 2013)
  - Already taken care by Study Material

- Notifications (may be issued any time during the year)
  - May have impact on the Rules
  - May have impact on exemptions, abatements, procedures, rate of interest etc.

- Orders
  - For some specific dispensation having effect like Notification.

- Clarifications
  - Do not change the law
  - Simply clarify interpretation of the given law

The Updates Pertain to following chapters of Section B-Service Tax of the Study Material

- **Chapter 5**
- **Chapter 6**
- **Chapter 7**

CHAPTER – 5 – EXEMPTIONS AND ABATEMENTS

1. Amendments in the Mega Exemption Notification – 25/2012-ST
    - 4 new exemptions introduced
    - 1 existing exemption modified
    - Change in 1 definition resulting in extension of scope of 4 existing exemption entries
2. Clarifications issued by the government regarding some of the exemptions in the above notification
    - Regarding exemption for services by non-airconditioned restaurant
    - Regarding exemption for services by RWA's
3. Ad-hoc exemption under Exemption Order No.1/2013
    - Restaurant and Accommodation services in Uttarakhand
4. Changes in the SEZ exemption parameters
    - The basic exemption remained same
    - Parameters of exemption changed
5. Change in Abatement relating to construction and sale of property

1. Amendments in the Mega exemption notification 25/2012-ST

A. New Exemptions Introduced by amending mega exemption notification

(a) Services in relation to serving of food/ beverages by an air conditioned canteen maintained in a factory exempted – entry 19A (w.e.f. 22.10.2013)

Services provided, in relation to serving of food or beverages, by a canteen have been exempted from service tax provided such canteen:-

(i) is maintained in a factory covered under the Factories Act, 1948, and

(ii) has the facility of air-conditioning or central air-heating at any time during the year.

[Notification No. 14/2013-ST dated 22.10.2013]

(b) Services provided by NSDC or by an approved SSC/assessment agency/training partner exempted – entry 9A (w.e.f. 10-09-2013)

Services provided by:-

(i) the National Skill Development Corporation (NSDC) set up by the Government of India;

(ii) a Sector Skill Council (SSC) approved by the NSDC;

(iii) an assessment agency approved by the SSC or the NSDC;

(iv) a training partner approved by the NSDC or the SSC

in relation to:-

(a) the National Skill Development Programme implemented by the NSDC; or

(b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or

(c) any other Scheme implemented by the NSDC

have been exempted from service tax.

[Notification No. 13/2013-ST dated 10.09.2013]

> ***Note:*** *Prior to 10.05.2013, courses run by an institute affiliated to NSDC were not liable to service tax as same were included in the definition of approved vocational courses and thus were exempt vide entry (l) of the negative list.*
>
> *With effect from 10.05.2013, the Finance Act, 2013 made the courses run by an institute affiliated to NSDC liable to service tax by amending the definition of approved vocational courses.*
>
> *With effect from 10.09.2013, said services have been exempted from service tax by incorporating them in the mega exemption notification. Hence, such services were taxable only during the period between 10.05.2013 and 09.09.2013.*

The relevant entry in Negative List [Section 66(D)]

(*l*) services by way of—

(*i*), (ii) …….

(*iii*) education as a part of an approved vocational education course;

Section 65B (*11*) "approved vocational education course" means,—

(*i*) a course run by an industrial training institute ……. or

(*ii*) a Modular Employable Skill Course…….. or

(iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India; (omitted by the Finance Act, 2013 w.e.f. 10-05-2013)

(c) Services provided by cord blood banks by way of preservation of stem cells exempted – entry 2A (w.e.f. 17.02.2014)

Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation have been exempted from service tax.

[Notification No. 04/2014-ST dated 17.02.2014]

(d) Loading/unloading/packing/storage/warehousing of rice exempted – entry 40 (w.e.f. 17.02.0214)

Services by way of loading, unloading, packing, storage or warehousing of rice have been exempted from service tax.

[Notification No. 04/2014-ST dated 17.02.2014]

B. Scope of existing exemption expanded by amending mega exemption notification

(f) Expansion in the scope of exemption of services provided by way of sponsorship of sports events – entry 11 (w.e.f. 10-01-2014)

Hitherto, services provided by way of sponsorship of sporting events organized by a national sports federation, or its affiliated federations were exempt from service tax where the participating teams or individuals represent any district, State or zone. The said exemption has been extended even in a case where the participating teams or individuals represent any **COUNTRY**.

[Notification No. 01/2014-ST dated 10.01.2014]

Entry 11: Services by way of sponsorship of sporting events organised,-

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;

(b), (c) , (d) , (e) …….

C. Definition of 'governmental authority' modified by amending definition part of mega exemption notification

(e) Scope of definition of 'Governmental authority' widened (w.e.f. 30.01.2014)

The definition of "Governmental authority" has been substituted with the following new definition:-

"Governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Thus, the scope of the definition has been enhanced. Henceforth, an authority or a board or any other body established by Government with 90% or more participation by way of equity or control need not be set up under an Act of Parliament or a State Legislature to qualify as Governmental authority.

[Notification No. 02/2014-ST dated 30.01.2014]

Earlier the entry reads as follow

"(s) "governmental authority'' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;"

Note that the above definition is relevant for exemption entries no.12, 25, 34 and 39.

Entry No. 12 - Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of specified structures.

Entry No. 25 - Services provided to Government, a local authority or a governmental authority by way of specified services like solid waste management, repair and maintenance of vessel.

Entry No. 34 - Services received from a provider of service located in a non- taxable territory by Government, a local authority, a governmental authority …..

Entry No. 39 - Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. Clarifications issued by the government regarding some of the exemptions in the above notification

<u>A. Clarifications on issues pertaining to the exemption available to the non air-conditioned restaurants under NN.25/2012-ST, Entry No.19</u>

Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year are exempt from service tax vide mega exemption notification.

In this regard, CBEC, vide *Circular No.173/8/2013 – ST dated 07.10.2013,* has clarified the following:-

A. Services provided (in relation to serving of food or beverages) by air-conditioned as well as non-air-conditioned restaurants, eating joints or mess, operating in a complex

In a complex, air conditioned as well as non-air conditioned restaurants are operational. These restaurants are clearly demarcated and separately named, but food is sourced from a common kitchen.

In such a case, services provided in relation to serving of food/beverages restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year is liable to service tax. However, such services provided in a non air-conditioned or non centrally air- heated restaurant will be treated as exempted service and thus, will not be liable to service tax.

B. Services are provided by a 'specified restaurant' in other areas e.g. swimming pool or an open area attached to the restaurant

Services provided by restaurant having the facility of air conditioning or central air heating in any part of the establishment, at any time during the year, in other areas of the hotel are liable to service tax.

C. Service tax on goods sold on MRP basis across the counter as part of the Bill/invoice

If goods are sold on MRP basis (fixed under the Legal Metrology Act), they have to be excluded from total amount for the determination of value of service portion.

B. Clarification regarding exemption available to services provided by a Resident Welfare Association (RWA) to its own members – NN.25/2012-ST, Entry 28

Mega exemption *Notification No. 25/2012-ST dated 20.06.2012* provides exemption to services provided by an RWA to its own members by way of reimbursement of charges or share of contribution up to ` 5,000 per month per member for sourcing of goods or services from a third person for the common use of its members.

Certain doubts have been raised regarding the scope of said exemption. CBEC vide *Circular No.175/01/2014 – ST dated 10.01.2014*, has clarified these doubts as follows:

S.No.	Doubt	Clarification
1.	(i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security	Exemption in mega exemption notification is provided specifically with reference to service provided by an unincorporated body or a non–profit entity registered under any law for the time being in force such as RWAs, to its own members. However, a monetary ceiling has been

	service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable on the same? (ii) If the contribution of a member(s) of a RWA exceeds ` 5,000 per month, how should the service tax liability be calculated?	prescribed for this exemption, calculated in the form of ` 5,000 per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members. If per month per member contribution of any or some members of a RWA exceeds 5,000, entire contribution of such members whose per month contribution exceeds ` 5,000 would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members.
2.	(i) Is Small Service Provider's (SSP) exemption under *Notification No. 33/2012-ST* available to RWA? (ii) Does 'aggregate value' for the purpose of threshold exemption, include the value of exempt service?	SSP exemption under *Notification No. 33/2012-ST* is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding ` 10 lakh in any financial year is exempted from service tax. As per the definition of 'aggregate value' provided in explanation of the notification, aggregate value does not include the value of services which are exempt from service tax.
3.	If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a 'pure agent' of its members, is exclusion from value of taxable service available for the purposes of SSP exemption or exemption provided under mega exemption notification?	In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the said rule. For example, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in

		respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.
4.	Is CENVAT credit available to RWA for payment of service tax?	RWA may avail CENVAT credit and use the same for payment of service tax, in accordance with the CENVAT Credit Rules, 2004.

C. Clarification as to whether "agricultural produce" includes rice and benefits available in respect of rice under mega exemption notification

CBEC vide *Circular No.177/03/2014 – ST dated 17.02.2014,* has clarified that the definition of agricultural produce under section 65(5) of the Finance Act, 1994 covers 'paddy'; but excludes 'rice'. It implies that benefits available to agricultural produce in the negative list [Section 66D(d)] are not available to rice.

However, many such benefits have been extended to rice by way of appropriate entries in the mega exemption notification as follows:-

(i) Services by way of transportation of food stuff by rail/vessel/goods transport agency is exempt from service tax. Food stuff includes rice.

(ii) Services by way of loading, unloading, packing, storage or warehousing of rice are exempt from service tax.

(iii) Carrying out an intermediate production process as job work in relation to agriculture is exempt from service tax. It is clarified that paddy milled into rice, on job work basis is also exempt from service tax since such milling of paddy is an intermediate production process in relation to agriculture.

The related entry of Negative list is reproduced below:

Section 66D (*d*) services relating to agriculture or agricultural produce by way of —

(*i*) agricultural operations directly related to production of any agricultural produce …..;
(*ii*) …….;
(*iii*) processes carried out at an agricultural farm …..;
(*iv*) ……;
(*v*) loading, unloading, packing, storage or warehousing of agricultural produce;
(*vi*) , (*vii*) ……..;

5. Abatement under Notification No. 26/2012-ST

From 08-05-2013 (Notification No. 9/2013-ST, w.e.f. 08-05-2013)

12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,- (a) for a residential unit satisfying both the following conditions, namely:– (i) the carpet area of the unit is less than 2000 square feet; **and** (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above.	25 30	(i) No CENVAT credit on inputs (ii) The value of land is included in the amount charged from the service receiver.

From 01-03-2013 to 07-05-2013

12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority;- (a) for a residential unit satisfying both the following conditions, namely:– (i) the carpet area of the unit is less than 2000 square feet; **or** (ii) the amount charged for the unit is less than rupees one crore; (b) for other than the (a) above.	25 30	(i) No CENVAT credit on inputs (ii) The value of land is included in the amount charged from the service receiver.

3. Ad-hoc Exemption to restaurant and accommodation services provided between 17.09.2013 and 31.03.2013 in Uttarakhand

Following taxable services provided, during the period between 17th September, 2013 and 31st March, 2014, to any person in the State of Uttarakhand are exempt from whole of the service tax leviable thereon:-

(i) Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes.

(ii) Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess.

The above exemption was granted in view of the fact that the floods and landslides last year caused extensive damage in the State of Uttarakhand and has adversely affected the life of the common man in the state. There was a need to provide support to ensure sustenance for the local population by revival of the hospitality industry.

[Ad-hoc Exemption Order 1/2013-ST dated 17.09.2013]

4. Revised scheme of service tax exemption in case of services provided to SEZ unit/Developer

Notification No. 40/2012-ST dated 20.06.2012 prescribing the scheme for claiming exemption in respect of the services received by a developer/units of an SEZ has been superseded by *Notification No. 12/2013-ST dated 01.07.2013.* The new notification has expanded the scope of *ab-initio* exemption and refund available to SEZ unit/developer.

The significant relevant changes in the new notification vis-à-vis erstwhile notification have been outlined as follows:-

Basis	***NN 40/2012***	***NN 12/2013***
Criteria to determine services eligible for *ab initio* exemption	The criteria to determine the input tax relating to the specified services wholly consumed within SEZ was based on Rules 4 and 5 of the Place of Provision of Services Rules, 2012.	The criteria to determine the input tax relating to the specified services wholly consumed within SEZ was based on Rule 7 (relating to ISD) of the CENVAT Credit Rules, 2004
Computation of the Amount of Eligible Refund of service tax paid on the	Maximum refund was restricted as under:- **Maximum refund**	The amount of refund is to be computed based on the ratio of turnover of SEZ unit to the all other units where common services have been used – this is as per Rule 7 of

common services shared between authorized operations in SEZ and its DTA operations	$= \frac{ST \times ET}{TT}$ where **ST** stands for service tax paid on services other than wholly consumed services (used for both SEZ and DTA Unit) **ET** stands for Export turnover of goods and services of SEZ Unit/Developer **TT** stands for Total turnover for the period	the CENVAT Credit Rules, 2004. For this purpose, the turnover of the SEZ Unit/Developer shall be taken as the turnover of authorized operation during the relevant period.
Return to be filed by SEZ Unit/ Developer	No return was prescribed	Quarterly statement in Form A-3 containing details of services received without paying Service Tax
Option not to avail the exemption and instead take CENVAT credit as usual	Earlier scheme did not expressly provided for such an option.	SEZ Unit/the Developer has an option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

CHAPTER 6 – SERVICE TAX PROCEDURES

Payment of Service Tax

Threshold limit for e-payment of service tax reduced from ` 10 lakh to ` 1 lakh

Proviso to rule 6(2) of the Service Tax Rules, 1994 has been amended to reduce the threshold limit for e-payment of service tax from ` 10 lakh to ` 1 lakh. Henceforth, with effect from 01.01.2014, where an assessee has paid a total service tax of ` 1 lakh or more including the amount paid by utilization of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically through internet banking.

[Notification No. 16/2013-ST dated 22.11.2013]

CHAPTER 7 – DEMAND, ADJUDICATION AND OFFENCES

Guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994

Circular No. 171/6/2013-ST dated 17.09.2013

Powers to arrest is introduced under the service tax law by the Finance Act, 2013. Accordingly, a person who has committed any of the offences specified under section 89(1)(i) and (ii) and the amount involved in the offence exceeds `50 lakh, can be arrested.

The Government has issued guidelines relating to the powers of the central excise officers to arrest and bail for offences under these two situations vide Circular No. 171/6/2013-ST, dated 17-09-2013. These guidelines are discussed below.

Conditions for arrest for offences under section 89(1)(i) and (ii):

(i) Since arrest impinges on the personal liberty of an individual, this power must be exercised carefully.

(ii) An officer of Central Excise not below the rank of Superintendent of Central Excise can carry out an arrest on being authorized by the Commissioner of Central Excise.

(iii) Apart from fulfilling the legal requirements, the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses and large amounts of service tax evaded are relevant factors before deciding to arrest a person.

Procedure for arrest

(i) The provisions of the Code of Criminal Procedure 1973 relating to arrest and the procedure thereof must be adhered to.

(ii) There is no prescribed format for arrest memo but the arrest memo should include:

(1) brief facts of the case;

(2) details of the person arrested;

(3) gist of evidence against the person;

(4) relevant section (s) of the Finance Act, 1994 or other laws attracted to the case and to the arrested person;

(5) the grounds of arrest must be explained to the arrested person and this fact noted in the arrest memo;

(6) a nominated person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact also may be mentioned in the arrest memo;

(7) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment;

(8) a separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event that there are several arrests in a single case.

Modalities to be followed at the time of arrest

(1) A female should be arrested by or in the presence of a woman officer;

(2) Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Governments and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made.

(3) It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.

Procedure for bail of the assessee

In case of an offence committed under section 89(1)(i), the Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in-charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973(2 of 1974). This is in terms of section 91(3) of the Finance Act, 1994, as amended.

In case of an offence committed under section 89(1)(ii), where a person has collected any amount exceeding fifty lakh rupees as service tax but fails to pay the amount as collected to the credit of the Government beyond a period of six months from the date on which such payment becomes due, after following the due procedure of arrest, the arrested person must be produced before the magistrate without unnecessary delay, and definitely within 24 hours. This is in terms of section 91(2) of the Finance Act, 1994, as amended. The magistrate will decide on whether or not to grant bail.

Post arrest formalities

The procedure is separately outlined for the different categories as listed in section 89(1) (i) and (ii) of the Finance Act, 1994, as amended:

(1) ***In cases covered under section 89(1) (i), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond***. The bail conditions should be informed in writing to the arrested person and also informed on telephone to the nominated person of the person (s) arrested .The arrested person should be also allowed to talk to a nominated person. The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and security will depend, inter alia, on the amount of tax involved.

(2) ***If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith***. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate

Magistrate without unnecessary delay and within twenty-four (24) hours of arrest. The arrested person may be handed over to the nearest police station for his safe custody, within 24 hours, during the night under a challan, before he is produced before the Court.

(3) ***In cases covered under section 89(1) (ii) and only in the event of circumstances preventing the production of the arrested person before a Magistrate without unnecessary delay, the arrested person may be handed over to nearest Police Station*** for his safe custody, within 24 hours, under a proper challan, and produced before the Magistrate on the next day, and the nominated person of the arrested person may be also informed accordingly.