Tax Talk

The Monthly Service Tax Bulletin

Vol : 2 - Issue 12 March, 2015 ₹ 5/-

Editorial

We wish vibrant colours bring happiness in everybody's life along with the spirit of joy, passion and enthusiasm. A Hearty Gratitude to all our readers. With this issue, our monthly service tax bulletin has completed the third year of its publication. Along with a sense of accomplishment and satisfaction, we realize the necessity and commitment to bring in some value addition with every issue. We again acknowledge the fact that this milestone is achieved all because of the wonderful readers and associates connected with our publication.

Hon'ble finance minister, Shri Arun Jaitley, presented the budget of the Union for the year 2015 – 16 on 28th February, 2015. Before the colourful festive mood of Holi, our finance minister did spread a lot of colours with his budget presentation, some of which are quite vibrant. But on the service sector – it seems to be all red!

He claimed that "The credibility of the Indian economy has been re-established". Overall it can be gathered that the budget is much in line with the aim and vision of the Government to capitalize on the future with minimal changes in the legislation and maximum emphasis on the implementation. In the taxation front, with this budget also it can be seen that most of the announcements are made keeping in mind the proposals for introduction of reforms in near future.

On one hand the FM was soft upon "Make in India" while on the other hand, he was quite harsh on "Serve in India" and "Black Money issue"! At the very first instance, Service Tax rate has been proposed to be increased from 12% to 14% and the Education Cess and the Secondary and Higher Education Cess are proposed to be subsumed, seeking to facilitate smooth transition into the upcoming Goods and Services Tax. It may be noted that since with the advent of GST, services shall also be subjected to levy of tax from the states' side (in line of VAT), the foreseeable hike in rate is sought to be bridged step by step. Its our FM's way to convey "Jor ka Jhatka…. Dheere se!".

Service tax has been the most revenue generating baby for the government off late and this year also the focus has been on the service sector only! The dark horse in this game has come out to be the "Swachh Bharat Cess", which is proposed to be levied at a rate of 2% on all or certain services *if need arises*. We really cannot figure out how and when the need shall be determined! For the time being, if the cess is levied, effective rate of service tax shall turn out to be 16% and also if the cess is levied only on certain services, this will lead to a two toned taxation regime, again inviting litigations.

A lot of exemptions have been withdrawn and some of the entries in negative list have been curbed. In a full-fledged proposition to raise revenue from the service sector, the definition of "consideration" has been amended to include reimbursable expenditure in value of taxable services. This amendment shall be overruling the Delhi High Court's judgement in case of "Intercontinental consultants and technocrats Private Limited V/s UOI & Anr". Thankfully the FM has not brought in retrospective amendment in this regards and kept up his promise.

The whole penalty levy structure is revamped. Changes are made out in Sections 76 & 78 of the Finance Act, 1994 to rationalize penalties and by deletion of Section 80, penalties are made mandatory. This section prescribed for waiver of penalties in case of presence of reasonable cause of failure, which we feel, should not have been swept out of the legislation. The budget proposals and changes are discussed in detail in this issue.

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.

CA Sushil Kr Goyal

DUE DATES

PAYMENT	FORM	DUE DATE
Payment for the Month February 2015 (assessees other than individual, proprietorship firm, partnership firm and LLP)	E-Payment	6th March, 2015
Payment for month/quarter ending March 2015 (All Assesses)	E-Payment	31st March, 2015

36

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

1) Admission to entertainment event or access to amusement facility: Proposed that the services in respect of such admission or access facility shall be made taxable.
2) Any process amounting to manufacture or production of goods: Proposed that any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption will be pruned out of negative list and made taxable.
3) Services provided by Government or a local authority: Proposed that, all services provided by the Government or local authority to a business entity (except the services that are specifically exempted, or covered by any another entry in the Negative List) be liable to service tax instead of the present entry making only "support services" taxable.

B. Tax Base Widened – Mega Exemption: (Effective from 01.04.2015)

1) Specified services provided to the Government, a local authority or a governmental authority: The exemption in this respect of construction, repair, maintenance, renovation or alteration services is curbed and made limited to such service of:
   (a) A historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;
   (b) canal, dam or other irrigation work; and
   (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.
2) Original works pertaining to an airport or port: Exemption in respect of construction, erection, commissioning or installation of original works pertaining to an airport or port is withdrawn.
3) Services provided by a performing artist: Exemption in respect of services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs.1,00,000/- for a performance.
4) Transportation of food stuff: Exemption of services of transportation of food stuff by rail or vessels or road will be limited to food grains including rice and pulses, flour, milk and salt. Transportation of agricultural produce is separately exempt, and this exemption would continue.
5) Exemption to following services provided by the following persons in respective capacities are being withdrawn:
   (a) By a mutual fund agent to a mutual fund or assets management company.
   (b) By a distributor to a mutual fund or an AMC.
   (c) By a selling or marketing agent of lottery ticket to a distributor.

   Service Tax on these services shall be levied on reverse charge basis.
6) Service by way of making telephone calls: Exemption is being withdrawn on the services by way of making telephone calls from:
   (a) Departmentally run public telephone
   (b) Guaranteed public telephone operating only local calls
   (c) Free telephone at airport and hospital where no bill is issued.

C. Tax Base Widened – Mega Exemption: (Effective from a date to be notified after the Finance Bill receives assent of the President)

Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, the exemption in respect of carrying out of intermediate production process of alcoholic liquor for human consumption on job work shall stand withdrawn.

D. Tax Base Widened – Mega Exemption: (Immediate Effect)

Existing exemption to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption had become redundant in view of the amendments made in law in the previous budget, in the definition of "intermediary" in the Place of Provision of Services Rules.

E. New Exemption – Mega Exemption: (Effective from 01.04.2015)

1) Ambulance Services: Service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is being exempt from Service Tax.
2) Life Insurance Business: LIC service provided under Varishtha Pension Bima Yojna is being exempted.
3) Treatment of effluent: Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.
4) Pre-conditioning etc of fruits and vegetables: Services by way of preconditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted.
5) Admission to museum: Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted.
6) Exhibition of movie: Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of it's members is being exempted.
7) Transport of export goods by road to LCS: Goods transport agency service provided for transport of export goods by road from the place of removal to a land customs station (LCS) is being exempted.

F. New Exemption – Mega Exemption: (Effective from a date to be notified after the Finance Bill receives assent of the President)

Service by way of right to admission to:

i. exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet
ii. recognized sporting events.
iii. concerts, pageants, award functions, musical performances or sporting events where the consideration for such admission is upto Rs.500 per person.

G. Amendment - Abatement : (Effective from 01.04.2015)

1) Transportation by road, rail or vessel: A uniform abatement of 70% is now being prescribed for transport by rail, road and vessel and Service Tax shall be payable on 30% of the value of such services subject to a uniform condition of non-availment of Cenvat Credit on inputs, capital goods and input services.
2) Air transport of passenger: The abatement for air transport services of passengers in classes other than economy is being reduced to 40% from 60% and Service Tax would be payable on 60% of the value of such higher classes.
3) Chit Fund: Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit.

H. Service Added - Reverse Charge: (Effective from 01.04.2015)

1) Services of Mutual fund agents & Mutual fund distributors: In respect of services, tax shall be paid by the assets management company or, as the case may be, by the mutual fund receiving such services.
2) Services of agents of lottery distributor: Service Tax shall be paid by the distributor of lottery.

I. Amendment - Reverse Charge: (Effective from 01.04.2015)

Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to full reverse charge. Presently, these are taxed under partial reverse charge mechanism.

(1) Rate Changes

(A) Service Tax Rate Enhanced:

The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be 14%.

(B) Swachh Bharat Cess

The Central Government is being empowered to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. The details of coverage of this Cess would be notified in due course.

[Effective from a date to be notified after the Finance Bill receives assent of the President]

(2) Changes in the Provision

(A) Reference to Main Service

The following illustration is being incorporated in section 66F(1) to exemplify the scope of the provision of this section:

The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.

(B) Valuation of taxable services

Section 67 is being amended to specify that consideration for a taxable service shall include:

(a) all reimbursable expenditure or cost incurred and charged by the service provider.

(b) amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

(C) Recovery of self assessed Tax

A new subsection (1B) is being inserted to Section 73 provide that recovery of the Service Tax amount self assessed and declared in the return but not paid shall be made under section 87, without service of any notice; and also subsection (4A) to Section 73 that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

(D) Penalty u/s Section 76

Penalty under this section is being amended to rationalize the provisions relating to penalties, in cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,

(a) penalty not to exceed ten per cent. of Service Tax amount involved in such cases;

(b) no penalty is to be paid if Service Tax and interest is paid within 30 days of issuance of notice under section 73 (1);

(c) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

(d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

(E) Penalty u/s Section 78

Penalty under this Section 78 is being amended to rationalize penalty, in cases involving fraud or collusion or wilful misstatement of suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,

(a) penalty shall be hundred per cent of Service Tax amount involved in such cases;

(b) a reduced penalty equal to 15% of the Service Tax amount is to be paid if Service Tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;

(c) a reduced penalty equal to 25% of the Service Tax amount, determined by the Central Excise officer by an order, is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

(d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order.

(F) Transition provision:

A new section 78 B is being inserted to prescribe, by way of a transition provision, that,

(a) amended provisions of sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under subsection (1) of section 73 or proviso thereto but no order has been issued under sub section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and

(b) in respect of cases covered by subsection (4A) of section 73, if no notice is served, or notice is served under subsection (1) of section 73 or proviso thereto but no order has been issued under subsection (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.

(G) Waiver of Penalty:

Section 80, which provided for waiver of penalty in certain circumstances, is being omitted.

(H) Revision Application made applicable:

Section 86 is being amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, shall lie in terms of section 35EE of the Central Excise Act.

(I) Settlement Commission provision has been amended:

Certain changes have been made in the provisions relating to Settlement Commission.

(J) Advance Ruling – Applicability Expanded

The facility of Advance Ruling is being extended to all resident firms by specifying such firms under section 96A (b)(iii) of the Finance Act, 1994.

[Effective from the date the Finance Bill receives assent of the President]

Registration under RNI No. WBENG/2013/55099
Postal Registration No. KOL RMS/465/2015-17

Amendment in CENVAT Credit Rule

1. **Time Limit for availment of CENVAT Credit** (Effective from 01.03.2015):

   Time limit of for availment of CENVAT credit of duty paid on inputs and service tax paid on input services by manufacturer or the provider of output service shall be increased from six months to one year. Such credit shall not be taken after 1 year of the date of issue of invoice, bill or challan.

2. **CENVAT Credit in respect of Inputs:** (Effective from 01.03.2015)

   CENVAT Credit in respect of inputs shall be available even if the said inputs are received in the premises of the job worker in case such goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service.

3. **CENVAT Credit in respect of Capital Goods:** (Effective from 01.03.2015)

   CENVAT Credit in respect of Capital Goods shall be available even if the same are in the premises of the job worker in case such are sent directly to the job worker on the direction of the manufacturer or the provider of output service.

4. **Cenvat Credit of Service Tax paid under reverse charge:** (Effective from 01.03.2015)

   Rule 4(7) is being amended to allow Cenvat Credit of Service Tax paid under partial or full reverse charge mechanism by the service receiver without the same being linked with the payment made of the value of taxable services to the service provider.

Amendment - Service Tax Rules

1. In respect of any service provided under aggregator model, the aggregator or any of his representative office located in India, is being made liable to pay Service Tax if the service is so provided using the brand name or trade name of the aggregator in any manner. For this purpose, "aggregator" has been defined to mean a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator. (Effective from 01.03.2015)
2. CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration in Service Tax. In this regard Order No. 1/15-ST, dated 28.2.2015, has been issued, prescribing documentation, time limits and procedure for registration. (Effective from 01.03.2015)
3. A provision for issuing invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC.
4. Due to revision in Service Tax rate, the composite scheme rates in respect of money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent shall be revised proportionately. (Effective from such date as the Central Government may specify, by a notification in the Official Gazette)

BOOK POST

Published from :

Tax Talk

Stephen House
Room No. 64, 4th Floor
4, B.B.D. Bag (East) Kolkata - 700 001

Owner: M/s Goyal Tax Services Pvt. Ltd., **Printer & Publisher:** Mrs. Reena Goyal Published from Stephen House, Room No. 64, 4 B. B. D. Bag (East), 4th Floor, Kolkata - 700 001 And **Printed from** M/s CDC Printers Pvt. Ltd., Tangra Industrial Estate-II (Bengal Pottery), 45, Radhanath Chowdhury Road, Kolkata - 700 015. **Editor:** CA Sushil Kumar Goyal.