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INDIRECT TAX EXPRESS

FORTNIGHTLY e-NEWS LETTER FROM M/s D A V A & ASSOCIATES
Chartered Accountants

FROM THE EDITOR

The Finance Minister Shri Arun Jaitley presented the Union Budget 2015-16 on 28th day of February, 2015.

There are some vital changes in the indirect taxes, particularly, in Central Excise and Service Tax. Due to space constraints, we have covered only important changes in relation to service tax in this E-News Letter.

SUMMARY OF IMPORTANT CHANGES IN SERVICE TAX MADE /PROPOSED BY BUDGET 2015-16

I. Changes in Finance Act, 1994

To be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015:-

- **Service Tax Rate:** - The rate of Service Tax is proposed to be increased from 12% to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' are proposed to be subsumed in the revised rate of Service Tax.

- **Negative List :-**

i. **Entry No. (j)** that covers 'admission to entertainment event or access to amusement facility' is proposed to be omitted making the activity taxable. Consequently the definitions of 'amusement facility' [Section 65 B (9)] and 'entertainment event' [Section 65B (24)] shall also be omitted. Further, Notification No 25/2012-ST has been amended to provide some exemptions in this regard, which has been discussed below with exemptions.

ii. **Entry No. (a)(iv)-** In the existing clause, 'support service' is proposed to be substituted with 'any service' as a result of which any service provided by government to business entity has been brought into tax net. Consequently, the definition of 'support service' vide Section 65B(49) is being omitted and "Government" has been defined vide proposed Section 65B(26A).

iii. **Entry No. (f)-** Clause (f) of the 66 D has been amended to exclude the 'services provided by way of any processes which are amounting to manufacture of alcoholic liquor for human consumption' as a result of which manufacture or production of alcoholic liquor for human consumption bought into tax net. Accordingly the definition of the word "process amounting to manufacture" has been amended.

Interesting Facts about the Union Budgets:

The budget presented by Manmohan Singh in 1992-93 is often hailed as most important budget of India ever created. He reduced import duty from 300% to 50%, which liberalized Indian economy, and the modern IT industry owes much of its presence to that decision.

To be effective on the date of enactment of the Finance Bill, 2015:-

- "Government" has been defined vide proposed **Section 65B(26A)** to mean *'the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include 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'.*

- The **Explanation 2 to section 65 B (44)** of the Finance Act, 1994 has been proposed to be amended to bring '*Service in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind by a lottery distributor or selling agent'* in the ambit of service tax. The expressions 'lottery distributor or selling agent' has been defined in proposed Section 65 B (31A)

- The **Explanation 2 to section 65 B (44)** of the Finance Act, 1994 has been proposed to be amended to bring 'Service by a foreman of chit fund for conducting or organizing a chit in any manner' in the ambit of service tax. The expressions 'foreman of chit fund' has been defined in proposed Section 65 B (23A)

- **Section 66F (1)** prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. An illustration is proposed to be incorporated in this section to clarify the scope of this provision. As illustrated, agency services provided a Bank to RBI are input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service Tax on the agency services so provided by virtue of the existing section 66F (1).

- Definition of Consideration in **Clause (a) of the explanation to Section 67** has been proposed to be amended to include any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service

- **Section 73:-**

  i. A new sub-section (1B) is proposed to be inserted to 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 under sub-section (1) of section 73; and

  ii. Sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records is proposed to be **omitted.**

- **Section 76 & Section 78:-** is proposed to be amended to rationalize the provisions relating to penalties which is summarized as follows:

Section	Fraud or Suppression of facts	Penalty	If ST & Interest paid within 30 days of Notice	If ST & Interest paid within 30 days from OIO	If the service tax amount gets reduced in any appellate proceeding
76	No	10% of ST	No Penalty	25% of the Penalty Imposed	penalty amount shall also stand modified accordingly
78	Yes	100% of ST	15% of ST	25% of ST Amount	

Interesting Facts about the Union Budgets:

Jawaharlal Nehru, Indira Gandhi and Rajiv Gandhi are the only Prime Ministers who have also presented Budget inside the Parliament.

➢ **Section 78B-** This **new section is proposed to be inserted** to prescribe by way of transition provision that:-

i. For the cases, where No SCN is served upto the enactment of Finance Bill 2015 - Amended provisions of sections 76 and 78 shall apply.
ii. For the cases where SCN has been served but the order is not passed as on the date of enactment Finance Bill 2015 - Amended provisions of sections 76 and 78 shall apply.
iii. For the cases covered under the benefit of the provision of section 73(4A) upto the enactment of Finance Bill 2015 - eligible for penalty at 50% of the service tax even after the enactment.

➢ **Section 80-** This section which provides for waiver of penalty in certain circumstances is **proposed to be omitted.**

➢ **Section 86-** This section is being amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, shall be dealt with Central Government in terms of Section 35EE of the Central Excise Act. The cases filed before the CESTAT for the between 2012 and this enactment would be transferred from CESTAT to Revision Authority.

II. Swachh Bharat Cess (*To be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015*)

An Additional cess, to be called the Swachh Bharat Cess, proposed to be imposed as service tax on all or any of the taxable services at the rate of 2% on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives. The provisions of Chapter V of the Finance Act, 1994 and rules made thereunder including those relating to refunds and exemptions from tax, interest and imposition of penalty shall be apply to the levy and collection of Swachh Bharat Cess on taxable services as they apply to collection of tax on taxable services.

III. Amendments in the Mega Exemption Notification[25/2012-ST] (*to be effective from 01.04.2015*)

a) New Entries inserted in the notification :

➢ **Sl. No 2 -**Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services.

➢ **Sl. No 26A-** Life insurance service provided by way of Varishtha Pension Bima Yojna.

➢ **Sl. No 43-** Service provided by a Common Effluent Treatment Plant operator for treatment of effluent.

➢ **Sl. No 44-** Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables.

➢ **S.No 45-** services provided by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.

Interesting Facts about the Union Budgets:

Until 2000, the norm was to present Budget at 5 PM on the last working day of February, which was changed for the first time by Yashwant Sinha when he started presentation at 11.00 AM during 2001 Budget.

➢ **S.No 46-** 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 not covered by S. No. ii, where the consideration for such admission is upto Rs. 500 per person.

[This shall be applicable from the date to be notified after the enactment of Finance Bill, 2015]

b) Entries removed/modified from the notification resulting in withdrawal of exemption:

➢ **S. No. 12** - Exemption presently available on specified services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority (vide S. No. 12 of the notification No. 25/12-ST) shall be limited only to:-

i. a historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;

ii. Canal, dam or other irrigation work; and

iii. Pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

➢ **S. No 14 -** Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn. The other exemptions shall continue unchanged.

➢ **S. No. 16-**Exemption to 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.

➢ **Sl. No 20(i) & 21(d) -**Exemption to transportation of food stuff by rail, or vessels or road will be limited to milk, salt & food grains including rice and pulses, flour.

➢ **Sl. Nos. 29 & 32 -** Exemptions are being withdrawn on the following services:

i. Services provided by a mutual fund agent to a mutual fund or assets management company,

ii. Distributor to a mutual fund or AMC,

iii. Selling or marketing agent of lottery ticket to a distributor.

iv. Departmentally run public telephone;

v. Guaranteed public telephone operating only local calls;

vi. Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued.

➢ **Sl. No 30-** Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, an amendment is being made in the entry at S. No. 30 to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work from this entry. [*This shall be effective from date to be notified by the Central Government after the enactment of the Finance Bill, 2015]*

IV. Amendments in Abatement Notification [26/2012-ST] *(to be effective from 1st Day of April, 2015)*

➢ Taxable value towards goods transport agency services has been enhanced from 25% to 30%. **(Serial No. 7)**

➢ Taxable Value towards transport of goods in a vessel from one port in India to another has been enhanced to 40% from 30%. **(Serial No. 10)**

Interesting Facts about the Union Budgets:

Morarji Desai was the longest serving Finance Minister who served for five years under Jawaharlal Nehru and three years under Indira Gandhi. Morarji Desai presented two Budgets on his birthday, February 29, in 1964 and 1968.

➢ Taxable value for transport of passengers by air, with or without accompanied in other than economy class has been increased to 60% from 40% **(Serial No.5)**
➢ CENVAT on inputs, capital goods and input services for the "Transport of goods by Rail" & "Transport of passengers, with or without accompanied belongings by rail" **(Serial No. 2& 3)**
➢ 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. **(Serial No. 8)**

V. Reverse Charge Mechanism *(to be 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.

➢ Services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company, where in mutual fund or asset Management Company is liable for payment of service tax to the extent of 100%.

➢ Services provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, wherein the Organizer is liable for service tax.

➢ Service provided or agreed to be provided by a person involving an aggregator in any manner the recipient of the service is liable to pay service tax. Aggregator means a person, who owns and manages a web based software application, and by means of such application enables a potential customer to connect with service provider under the brand name or trade name of the aggregator. This may cover the marketing/ advertising intermediaries assisting the intelligent location of potential customers for the product/ service.

VI. Changes in the Service Tax Rules,1994

➢ Registration process for Service Tax has been simplified and amended vide Order No. 1/15-ST, dated 28.2.2015, effective from 1.3.2015. Following are the key instructions specified in the said order[This is effective from 1st March, 2015]:

i. Requirement of PAN No. is mandatory for registration;
ii. Registration for single premises shall be granted within two days of filing the application.
iii. Applicant shall quote the email address and mobile number. Further, existing registrants who have not submitted this information are required to file an amendment application by 30-4-2015.
iv. Documentation required to be submitted along with registration certificate has also been specified. ***[Effective from 01.03.2015]***

➢ A provision for issuing digitally signed 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. ***[Effective from 01.03.2015]***

➢ **Rule 2(d)(i) -** in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service or any of his representative office located in India, is being made liable to pay Service Tax, as recipient of service. Definition of aggregator has also been inserted.

Interesting Facts about the Union Budgets:

Budget was first introduced in India on 7th April, 1860 from East-India Company to British Crown. The first Finance Member, who presented the Budget in India, was James Wilson on 7th April, 1860

➢ In respect of certain services like money changing service, service provided by air travel agent, insurance service and service provided by lottery distributor and selling agent, the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately. *[This shall be effective as and when the revised service tax rate comes into effect.]*

➢ **Rule 6(6A) -** Service tax self-assessed and declared in the return under section 87 is being omitted consequent to the amendment in section 73 for enabling such recovery. *[This shall be effective from the date of enactment of Finance Bill, 2015]***.**

VII. Change in Cenvat Credit Rules, 2004 *(to be effective from 01.03.2015 unless otherwise provided)*

➢ **Rule 4(7) -** This is being amended to allow Cenvat Credit of Service Tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider. ***[This shall be effective from 1.04.2015].***

➢ **Rule 4** has been amended to change the period for taking Cenvat Credit is being extended from six months from the date of invoice **to one year from the date of invoice.**

➢ **Rule 4** has been amended to provide for Cenvat credit in respect of receipt of inputs/ capital goods directly by job worker when such goods are sent directly on direction of manufacturer or the provider of output service.

➢ **Rule 4(5)(a)** has been amended to provide for Cenvat credit on inputs even if inputs are directly sent to job worker. The goods sent to job worker can be moved to another job worker as well. However, it shall be ensure that the goods are received back by the manufacturer within 180 days from the date of sending such goods. In case the goods are sent to job worker premises without first receiving into factory by manufacturer, then 180 days shall be counted from date of receipt of goods by job worker.

➢ **Rule 5** has been amended to provide that the 'Export goods' means any goods which are to be taken out of India to a place outside India for the purpose of claiming the refund.

➢ **Rule 6** has been amended to provide that the exempted goods shall include even non-excisable goods and the value of invoice shall be considered for ascertaining the eligible/ineligible Cenvat credit.

➢ **Rule 14** has been amended to provide for penal provisions even if Cenvat credit has been taken but not utilised. In Rule 14 it has been provided that all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: - (i) the opening balance of the month has been utilised first; (ii) credit admissible in terms of these rules taken during the month has been utilised next; (iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.

VIII. Changes through Notifications issued under powers given in the Finance Act, 1994

a) Advance Ruling [Section 96A (b) (ii)] (w.e.f. 01.03.2015)-

Interesting Facts about the Union Budgets:

Corporate tax (today is known as Minimum Alternate Tax) was first introduced by Rajiv Gandhi in 1987 Budget.

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. [Notification No. 9/2015 dated 1.03.2015].

b) Amendment in Notification No. 31/2012-ST (w.e.f 01.04.2015)

Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).

c) Notification No. 42/12-ST dated 29.6.2012 rescinded

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 has 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, making the place of provision of a service provided by such agents as outside the taxable territory.

[In preparation of this budget summary, assistance has been taken from TRU letter 334/5/2015-TRU dated 28.02.2015 clarifying various budget changes.]

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