March, 2015 VOL # 10, ISSUE # 2

INDIRECT TAX EXPRESS

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

PART-A: FROM THE EDITOR

Attention service tax assessees: changes in the Union Budget effective from 01.04.2015

Some of the changes introduced in the Budget 2015-16 are effective from 01.04.2015. **Service tax rate hike to 14% is NOT effective from 01.04.2015**. Given below is a list of those changes which have become effective from 01.04.2015 for the benefit of service tax assessees:

1. New Exemptions Vide Amendment in Mega Exemption Notification No. 25/2012-ST:

Following services will now be exempt:-

- Service by way precondition, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables
- Service by a Common Effluent Treatment Plant operator
- Life insurance service provided by way of Varishtha Pension Bima Yojna
- Ambulance services
- Admission to a museum, zoo, national park, wild life sanctuary, and a tiger reserve
- Service provided by exhibitor of movie to a distributor or an AOP consisting of exhibitor as one of its member.
- Service by way of right to admission to,-
  - Exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.
  - Recognized sporting events.
  - Concerts, pageants, award functions, musical performances or sporting events not covered by above, where the consideration for such admission is upto Rs. 500 per person.

2. Exemptions withdrawn vide Amendment in Mega Exemption Notification No. 25/2012-ST

Following services will now be taxable:-

- All construction, erection, commissioning, etc. services provided to the Government, a local authority or a governmental authority to
  - a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
  - a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or or cultural establishment; and
  - a residential complex predominantly meant for self-use or the use of their employees or

WHAT'S NEW

- The Central Government vide **Notification No. 13/2015-Cus dated 30.03.2015** has decreased the rate of customs duty on specified items imported into India from Japan w.e.f. 01.04.2015.

- CBEC vide **Notification No. 32/2015-Cus (NT), dated 19.03.2015** has notified the rates of exchange of foreign currency into Indian and vice versa w.e.f. 20.03.2015.

- The CBEC vide **Circular No. 08/2015-Cus dated 24.03.2015**, has advised all the Chief Commissioners to instruct their officers and staff not to permit import of steel and steel products without compliance of mandatory Indian Standards stipulated in the Steel and Steel Products (Quality Control) Second Order, 2012.

"Strive, not to be a success, but rather to be of value"
- Albert Einstein

other persons specified in the *Explanation* 1 to clause 44 of section 65B of the said Act.

- All construction, erection, commissioning or installation services provided to an airport or port
- 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
- Transportation of food stuff by rail, or vessels or road other than milk, salt & food grains including rice and pulses, flour.
- Services provided by a mutual fund agent to a mutual fund or assets management company, distributor to a mutual fund or AMC
- Selling or marketing agent of lottery ticket to a distributor.

3. Amendments in the Abatement Notification No 26/2012-ST:

Service	Existing taxable value	New taxable value
Transport of goods by road/ GTA service	**25%**	**30%**
Transport of goods in a vessel from one port in India to another	**40%**	**30%**
Transport of passengers by air, in other than economy class	**40%**	**60%**
Services provided in relation to chit.	**70%**	**100%**

- Abatement in case of 'Transport of goods by Rail' & 'Transport of passengers, with or without accompanied belongings by rail' shall be allowed on the condition that CENVAT on inputs, capital goods and input services has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Thus transportation of goods by road, air travel by business class & first class and chit funds shall become expensive, whereas transport of goods by a vessel shall become cheaper.

4. Amendments in Reverse Charge Notification No. 30/2012-ST:

- Full reverse charge on manpower supply and security service provided by individual, HUF, partnership firm to a body corporate
- Reverse charge on service provided by a mutual fund agent, mutual fund distributor and agents of lottery distributor

Services of mutual fund agents and selling agents of lottery tickets shall now be expensive.

5. Amendments in Cenvat Credit Rules, 2004: Cenvat credit of service tax paid by recipient of service in partial reverse charge is now allowed immediately on payment of tax without linking it to the payment to service provider.

6. Amendment in Notification No. 31/2012-ST: 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).

PART-B: QUIZ TIME!!

1. What amount of Central excise or service tax a taxpayer is required to pay in cash to be qualified as a Large Tax Payer?

2. Name any two services provided by the government which are taxable under service tax.

3. What is the revenue neutral rate determined for the purpose of GST in India?

(Please mail your replies with your name, location and e-mail id to ***davaidtexpress@gmail.com)***

(The first 3 correct answers will be published in the next issue with name & mail id of the sender.)

ANSWER TO LAST FORTNIGHT'S QUIZ

Reply to Q1 – 70%
Reply to Q2 – 5 years
Reply to Q3 - True

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SOME COMMON LEGAL MAXIMS AND THEIR USE

- ***Exempli Gratia*** - For the sake of example. **E.g.** is the abbreviated form of *Exempli gratia*.
- ***Pro tem*** – For the time being. **E.g.** Mr. Singh was appointed the *pro tem* speaker till elections were held.

PART-C: CASE UPDATES

2. C.C.E. vs Sachin Malhotra [2015 (37) S.T.R. 684 (Uttarakhand High Court)]

Issue: Under Finance Act, 1994 as amended, the requirement of operators to be registered under Section 75 of the Motor Vehicles Act, 1988 in order to make them eligible as 'Rent-a-cab operator scheme has been dispensed with, w.e.f. 16.10.98 by Finance Act, 1998. Consequently, whether the person engaged in the business of renting cabs, irrespective of the number of vehicles, is covered under the definition of Rent-a-cab operator scheme, and liable to pay service tax?

Decision: The Hon'ble Uttarakhand High court observed that the fundamentally important and distinguishing feature between rent-a-cab and "hiring" is that, in the case of "hiring", undoubtedly, the owner of the vehicle retains control and possession; he either drives the vehicle himself or employs somebody else to drive the vehicle; and the customer merely makes use of the vehicle by travelling in the vehicle on the basis of a contract that he will pay the requisite hire charges for the period he uses the vehicle. Unlike the same, in the case of rent-a-cab, as is provided in the Motor Vehicles Act, the person is enabled to take the vehicle with him wherever he pleases, subject, no doubt, to the terms of the contract between the parties and he uses the vehicle as his own subject to his paying the rent. Though both rent and hire, may, in a different context, have the same connotation; in the context of rent-a-cab scheme and hiring, the Hon'ble High Court was of the view that they signify two different transactions. What the lawgiver has chosen fit to tax by way of imposition of service tax is only transaction relating to business of renting of cabs. The Hon'ble High Court, therefore, was of the view that, unless there is control, which is passed to the hirer under the rent-a-cab scheme, there cannot be a taxable transaction under Section 65(105)(o), read with Section 65(91) of the Service Tax Act.

1. Alokik Township Corporation vs. Commissioner of Central Excise [2015 (37) S.T.R. 859 (Tri. – Del.)]

Issue: The appellants had entered into an agreement with Gopal Housing & Plantation Corporation for development of land belonging to GHP by construction of roads, laying of Sewer lines, construction drains, laying of water pipelines, underground cabling works including optical fibre cables, installation of pre-cast iron poles on road sides/dividers with lights, panels & MCBs etc construction of boundary wall etc. Whether the department was correct in contending that the appellant's activity would attract service tax under the head 'Construction of Residential Complex Service' upto 30.05.2007 and under the head 'Works Contract service' w.e.f 01.06.2007?

Decision: The Hon'ble Delhi CESTAT, on perusal of the scope of work in terms of the agreement, was of the view that the appellant's activity is only of developing the land belonging to GHP for the township, which comprises of leveling of the land, demarcation of plots/shops/business premises, construction of boundary wall surrounding the township, construction of roads as per the norms of JDA, erection of iron poles with lamps, panels, MCBs etc., underground cabling work including laying optical fibre cables, laying of underground drainage lines, development of water harvesting system, construction of underground as well as overhead tanks for storage of water, laying of underground water pipelines in the township, development of landscaped lawns in the earmarked areas etc. The development of land for township is not covered by the definition of construction of complex service or by definition of works contract service. In view of this, service tax demand from the appellant is not sustainable.

Capital markets regulator Securities and Exchange Board of India (SEBI) has been asked to furnish its fee income details earned since 2012 till date by the service tax department. The tax department had issued several notices to SEBI to share the details for assessment of service tax liability 2012 onwards. As per initial assessment by the tax department, SEBI's service tax liability will be more than Rs 500 crore.

PART-D: FREQUENTLY ASKED QUESTIONS

Query 1: M/s XYZ Ltd.(builder) has sold a flat to M/s ABC Ltd @ Rs. 2500 per sq.ft, and has charged service tax on the installments due. Now M/s ABC Ltd, after paying some installments, has sold the flat to third party @ Rs. 3500 per sq. ft., through nomination. What would be the service tax implication in this case, for the third party, M/s ABC Pvt Ltd and M/s XYZ Ltd.

Reply by E-News Letter Team: Transfer of a flat by the buyer before paying full installments and before completion of the building is not liable to pay service tax as such transfer does not fall in the declared service entry as the said person is not providing any construction service. Even in any other case, transfer of such an interest would be transfer of a benefit to arise out of land which as per the definition of immovable property given in the General Clause Act, 1897 is a part of immovable property. Such transfer would therefore be outside the ambit of service being a transfer of title in immovable property. Therefore, M/s ABC Pvt. Ltd. would not charge service tax for the sale of flat to third party as such sale does not fall within the ambit of Service tax. Service tax would be chargeable on the instalments already paid by M/s ABC Ltd. and also on subsequent instalments paid by the third party.

Query 2: Mr. A has a Flat and wants to let it out to a company. The company will be using the let out flat for residential purpose of the employees. Whether service tax will be applicable on it?

Reply by E-News Letter Team: According to **clause (m) of Section 66D of Finance Act, 1994**, "*services by way of renting of residential dwelling for use as residence*" is covered under Negative list. If the let out property will be used only for residential purpose of the employees, service tax will not be chargeable on it.

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