SERVICE TAX : CHANGES TO BE APPLICABLE WITH THE ENACTMENT OF FINANCE BILL 2015

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"FINANCE BILL 2015 RECEIVED PRESIDENT ASSENT"

Finance Bill, 2015 has got President Assent on 14th May, 2015 and has become Finance Act, 2015. As you know, Finance Bill 2015 has proposed lot of changes in Service tax provisions, applicable with effect from various dates.

Now with the enactment of Finance Bill, 2015, following changes have become applicable:

DEFINATIONS INTRODUCED / AMENDED

1. **The Term "Government Defined:** Services, excluding few specified services, provided by the government have been included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term "government" has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term "**government**" is being incorporated in the Act.

   Sub-section 26A inserted in section 65B in order to define the term Government. The term 'Government' defined to mean Central Government, State Government, Union territory and its departments. But it would not include entities whose accounts are not required to be kept under Article 150 of the Constitution.

2. **Service Tax liability on Chit fund foremen and distributors or selling agents of lottery:** The intention in law has always been to levy Service Tax on the services provided by:

   (i) chit fund foremen by way of conducting a chit.

   (ii) distributors or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

   However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld.

   Hence, in order to remove ambiguity, an explanation is being inserted in the definition of "service" to specifically state the intention of the legislature to levy service tax on activities undertaken by chit fund foremen in relation to chit, and distributors or selling agents of lottery in relation to lotteries.

CHANGES IN PRINCIPLES OF INTERPRETATION

3. **Section 66F which deals with Principles of interpretation of specified description of services or bundled services.** It prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. An illustration is being incorporated in this section to exemplify the scope of this provision.

As illustrated, reference to service provided by RBI, in section 66D(b) does not include any agency service provided by other banks to RBI, as such agency services 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).

CHANGES IN VAUATION OF SERVICES

4. **Section 67 : Valuation of Taxable Service:** The definition of the term 'consideration' amended to include:
   (a) all reimbursable expenditure or cost incurred and charged by the service provider subject to prescribed circumstances.

   The intention has always been to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically by this provision.

   (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.

PENAL PROVSIONS, RECOVERY OF TAX, APPEALS

5. **Section 73 : Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded:** Section 73 is being amended in the following manner:

   (i) a new sub-section (1B) is being 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 section73,; and

   (ii) sub-section (4A), that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

   Consequently, Rule 6 (6A) of Service Tax Rules which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted due to the amendment in section 73 for enabling such recovery

6. **Section 76: Penalty for failure to pay service tax:** Section 76 is being amended to rationalize penalty, in cases <u>not involving fraud</u> or collusion or wilful mis-statement or

suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax, inthe following manner,-

(i) penalty not to exceed ten per cent of service tax amount involved in such cases;

(ii) no penalty is to be paid if service tax and interest is paid within 30 days of issuance of notice under section 73 (1);

(iii) 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

(iv) if the service tax amount gets reduced in any appellate proceeding, then 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.

7. **Section 78: Penalty for suppressing etc. :** Section 78 is being amended to rationalize penalty, in cases involving fraud or collusion or wilful mis-statement 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,-

(i) penalty shall be hundred per cent of service tax amount involved in such cases;

(ii) 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;

(iii) 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

(iv) if the service tax amount gets reduced in any appellate proceeding, then penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if service tax, interest and reduced penalty is paidwithin 30 days of such appellate order

8. **New Section 78B : Transitory Provision:** A new section 78 B is being inserted to prescribe, by way of a transition provision, that,-

- amended provisions of section 76 and 78 shall apply to cases where either no notice is served, or notice is served under sub-section (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
- in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (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, penalty shall not exceed 50% of the service tax amount.

9. **Section 80: Penalty not to be imposed in certain cases:** Section 80 provided for waiver of penalty in specified situations, is being omitted.

10. **Section 86: Appeals to appellate tribunal:** Section 86 is being amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section35EE of the Central Excise Act.

11. **Settlement Commission:** Certain changes have been made in the provisions relating to Settlement Commission. These provisions, contained in the Central Excise Act, 1944, are made applicable to Service Tax, through section 83 of the Finance Act, 1994.

12. Rule 6 (6A) which provided for recovery of 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.

SERVICE TAX : CHANGES TO BE APPLICABLE FROM THE DATE TO BE NOTIFIED AFTER THE ENACTMENT OF FINANCE BILL 2015

SERVICE TAX RATE

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 from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

Service Tax Rate	Earlier 12.36%	New 14.00%

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. Amendments to this effect have been proposed in the Service Tax Rules. The new rates are summarized in the table below:

Service	**Old Rate**	**New Rate**
Air Travel Agent		
Domestic booking	0.6 per cent	0.7 per cent
International booking	1.2 per cent	1.4 per cent
Life insurance		
First year premium	3 per cent	3.5 per cent
Subsequent year premium	1.5 per cent	1.75 per cent
Money changing service		

Amount of currency exchanged upto INR 0.1 million	0.12 per cent subject to minimum of INR 30	0.14 per cent subject to minimum of INR 35
Amount of currency exchanged exceeding INR 0.1 million and upto INR1 million	INR 120 and 0.06 per cent	INR 140 and 0.07 per cent
Amount of currency exchanged exceeding INR1 million	INR 660 and 0.012 per cent subject to maximum of INR 6,000	INR 770 and 0.014 per cent subject to maximum of INR 7,000
Lottery		
Where guaranteed prize payout is more than 80 per cent	INR 7,000	INR 8,200
Where guaranteed prize payout is less than 80 per cent	INR 11,000	INR 12,800

SWACHH BHARAT CESS

An enabling provision is being incorporated in the Finance Bill, 2014 to empower the Central Government 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 cess shall be levied from the date to be notified after the enactment of the Finance Bill 2014.

CHANGES IN SECTION 66D OF NEGATIVE LIST

Entertainment Event or Amusement Facility

The Negative List entry that covers "admission to entertainment event or access to amusement facility" is being omitted [section 66D (j)]. Consequently, the definitions of "amusement facility" [section 65 B (9)] and "entertainment event" [section 65B(24)] are also being omitted. The implication of these changes are as follows,-

- Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.
- Service tax to be levied on service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event, if the amount charged is more than Rs. 500 for right to admission to such an event. However, the existing exemption, by way of the Negative List entry, to service by way of admission to entertainment event, namely, exhibition of cinematographic film, circus, recognized sporting event, dance, theatrical performance including drama and ballet shall be continued, through the route of exemption. For this purpose a new entry is being inserted in notification No. 25/12-ST. The term recognized sporting event has been defined in the proposed amendment in the said notification (No 6/2015ST dated 1st March 2015).

Any Process Amounting to Manufacture or Production of goods

- The entry in the Negative List that covers service by way of any process amounting to manufacture or production of goods [section 66D (f)] is being pruned to exclude any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption. Consequently, Service Tax shall be levied on contract manufacturing/job work for production of potable liquor for a consideration. In this context, the definition of the term " process amounting to manufacture or production of goods" [section 65 B (40)] is also being amended, along with the Negative List entry [section 66D (f)], with a consequential amendment in S. No. 30 of notification No. 25/12-ST, to exclude intermediate production of alcoholic liquor for human consumption from its ambit.

Support Services by Government to Business Entities

- Presently, services provided by Government or a local authority, excluding certain services specified under clause (a) of section 66D, are covered by the Negative List. Service Tax applies on the *"support service"* provided by the Government or local authority to a business entity. An enabling provision is being made, by amending section 66D (a)(iv), to exclude all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of "support service" [section 65 B (49)] is being omitted. Accordingly, as and when this amendment is given effect to, 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, shall be liable to service tax .