INDIRECT TAX EXPRESS

Fortnightly e-newsletter from m/s DAVA & Associates, Chartered Accountants

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FROM THE EDITORIAL TEAM

Changes in the Union Budget effective from 14.05.2015

The Finance Bill 2015 has received Presidential assent on 14.05.2015 and became Finance Act (No. 20) 2015. Accordingly amendments proposed in Union Budget in relation to Chapter V of Finance Act, 1994 have come into force w.e.f. 14.05.2015. However, **Service tax rate hike to 14% is NOT effective until notified**. Given below is a list of those changes which have become effective from 14.05.2015:-

Changes in Definitions:

- The definition of the term "Government" has been inserted in the act [Section 65B(26A]
- Explanation 2 to Section 65B(44) which defines service have been amended to include activity carried out by Lottery distributor or selling agent and foreman of chit funds in the ambit of service tax.
- The definition of terms "Lottery distributor or selling agent" and "foreman of chit funds" have been inserted in the act [Section 65B (23A) & (31A)]
- Definition of Consideration in Clause (a) of the explanation **to Section 67** has been 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, except in such circumstances, and subject to such conditions, as may be prescribed;
  - 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.

Illustration to Explain scope of Section 66F (1):

An illustration has been incorporated in Section 66F (1), which prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. The illustration has been given to clarify the scope of this provision.

Changes in Penal Provisions:

- **Section 73 -** A new sub-section (1B) has been 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. Accordingly, Sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records has been omitted.
- **Sections 76 and Section 78** has been amended to rationalize the provisions relating to penalties which are summarized as follows:

Inside this issue:

GST NEWS

The proposed constitutional amendment bill on Goods and Service Tax (GST) was on Tuesday referred to a Select Committee of Parliamentarians, raising doubts over the roll out of the new indirect tax regime from April 1, 2016, as scheduled. The government had resisted sending the Bill to a standing committee on finance for the second time but finally agreed to let it be reviewed by the select committee within a specified timeframe so that it could be passed in the Monsoon Session. The 21-member panel will give its report by the last day of the first week of the Monsoon Session. The GST Bill was approved by Lok Sabha on Wednesday last week

IDT NEWS

- Led by over two-fold surge in excise duty collections, indirect tax revenue jumped 46.2 per cent to Rs 47,747 crore in April this year compared to the same month last year which was at Rs 32,661 crore in April 2014.
- Finance bill 2015 got presidential assent on 14.05.2015 and became Finance Act 2015. Changes in section 65B, 66F, 67, 73, 76, 78, 80, 86 and newly inserted section 78B of the Finance Act 1994 became effective from the date of the assent by the President, i.e, 14.05.2015

Section	involving fraud or collusion or willful misstatement or suppression of facts	Normal Penalty	If paid within 30 days from SCN	If paid within 30 days from OIO	If the service tax amount gets reduced in any appellate proceeding
76	No	10%	Nil	25% of Penalty	penalty amount shall also stand modified accordingly
78	Yes	100%	15%	25% of Service tax demanded	

- **Section 78B -**This new section has been inserted for fixing the effective date for the new penal provision as under:-
  - For the cases, where No SCN is served or where SCN has been served but the order is not passed upto the enactment of Finance Bill 2015 - Amended provisions of sections 76 and 78 shall apply.
  - where SCN has been issued but no order has been passed before the date of enactment of Finance Bill, the period of 30 days for the purpose of closure of proceedings on the payment of service tax and interest shall be counted from the date on which the Finance Bill, 2015 receives the assent of the President..
- **Section 80** which provides for waiver of penalty in certain circumstances is has been omitted.
- **Section 86 -** with this amendment that matters 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.

NOTIFICATIONS & CIRCULARS

- The CBEC vide **Circular No. 1003/10/2015-CX** dated **05.05.2015** clarified the purpose of inserting the third and fourth provisos in sub-rule (2) of Rule 11 of CER **vide Notification No. 8/2015 – Central Excise (NT) dated 1-3-2015**. Its sole purpose is to allow an additional facility for direct transport of goods from the manufacturer or the importer to the consignee where the consignee avails Cenvat Credit on the basis of the Cenvatable invoice issued by the registered dealer or the registered importer.

- The Central Government vide **Notification No. 31/2015-Customs**, dated **07.05.2015** exempted Liquefied natural gas (LNG) and natural gas (NG) when imported by GAIL for supply to a generating company to supply electrical energy or to engage in the business of supplying electrical energy, for generation of electrical energy subjected to certain condition.

- The Central Government vide **Notification No. 17/2015-Customs (ADD)**, dated **01.05.2015** extended anti-dumping duty on “Polytetrafluoroethylene (PTFE)” originating in, or exported from, Russia for a further period of one year

QUIZ!!!

1. Name two items which are not eligible for SSI exemption under Central Excise?

2. At what percentage of total amount service tax is payable in case of Original works under composition scheme of works contract?

3. State whether True or False: - “Cenvat Credit of SAD or Special CVD is eligible to service providers.”

(Please mail your replies with your name and 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- **30%**
Reply to Q2 – **Form F**
Reply to Q3– **False**

Reply given by:
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CASE UPDATES

1. **Pricol Ltd vs Commissioner of Central Excise, [2015(38) S.T.R 668 (Tri. Chennai)]**

Issue: - Whether appellant is eligible to avail cenvat credit when its Head office is not registered as Input Service Distributor?

Decision-The Hon'ble CESTAT held that perusal of the substantial law in rule 2(m) of CCR 2004 leads to the conclusion that the appellant was entitled to the credit for no finding on the genuinity of the credit availed and such credit allocated by the ISD. Similarly, there was no disintegration between the appellant and its head office and no finding that the credit which appellant availed is not attributable to its manufacturing activity. Therefore, the fact itself makes it clear that there was an inextricable link between the head office and the appellant. So also the credit is remaining genuine thereof and cannot be denied on a procedural lapse of non-registration. Procedure is not tyrant of the law but is servant thereof and justice cannot be denied for reasons attributable to the procedural law.

2. **Shree Balaji Transport vs Commissioner of Cus., C. Ex. & S.T. [2015 (38) S.T.R 651 (Tri. Bang)]**

Issue: - Whether Individual Truck Owner can be held liable to pay servicer tax as GTA?

Decision-The Hon'ble CESTAT held when words of the statute are plain and unambiguous, there is no needs to place reliance on external aids such as parliamentary proceedings. From the legal definition it is clear that any person (including individuals) who provides service in relation to transport of goods by road is liable to Service tax. There is no exclusion of individual truck owners from the purview of service tax levy under the law.

3. **Hindalco Industries Limited Vs Union Of India [2015 (315) E.L.T. 10 (Bom.)]**

Issue: - Whether excise duty leviable on aluminium dross and skimmings which arose as a by-product in the process of manufacture of aluminium?

Decision-The Hon'ble Mumbai High Court held that merely selling does not mean dross and skimming are marketable commodity as even rubbish can be sold. Everything which is sold is not necessarily a marketable commodity as known to commerce and which it may be worthwhile to trade in and Therefore, aluminum dross and skimmings which arose as a by-product in the process of manufacture of aluminum, were not manufactured goods even after amendment to section 2(d) of the Central Excise Act, 1944.

4. **L'oreal India Pvt. Ltd. Vs Commr. Of C. Ex., Raigad/Thane [2014 (308) E.L.T. 746 (Tri. - Mumbai)]**

Issue: - Whether the activity of affixing of label and MRP on imported packages before cleared for home consumption amounts to manufacture?

Decision- The Hon'ble Mumbai High Court held that so long as the goods remain under the Customs control, they cannot be said to have been imported into India. When the appellant was undertaking the activity of labelling in the Customs bonded warehouse or in a private warehouse on execution of bond and bank guarantee with the Customs, control of the goods remained with the Customs and importation of goods could not said to have been completed. Therefore, the question of 'manufacture' attracting excise duty liability would not arise at all before the goods are cleared for home consumption. Since, there was a statutory requirement of affixing the labels under Standards of Weights and Measure Act, the activity of affixing of label and MRP on imported packages before cleared for home consumption cannot amount to 'manufacture.

FREQUENTLY ASKED QUESTIONS

"Neither should a ship rely on one small anchor, nor should life rest on a single hope"

\- ***Epictetus***

Query 1: M/s AB Construction has hired a batching plant from M/s XYZ for its operation at a construction site. During its operation some consumable like diesel was provided by service receiver. Accordingly M/s AB construction deducted the value of diesel supplied to the service provider and paid the balance in terms of money. What shall be the taxable value for the purpose of calculating service tax?

Reply by e-newsletter team: When consideration for providing services are not wholly or partly in terms of money, the money equivalent of the total consideration shall be considered for the purpose of value of taxable service as provided in section 67(1)(ii) of Finance Act, 1994. Therefore, cost of consumables supplied should be included with consideration in money to determine taxable value on which service tax is payable.

Query 2: M/s XYZ is a registered dealer who purchase goods directly from manufacturer and sell goods to other manufacturer under cover of cenvatable invoice. Now it has also imported certain goods and has paid CVD and wants to pass such credit. Whether M/s XYZ required two registration for issuing Cenvatable invoice as dealer and as importer?

Reply by e-newsletter team: As per Notification No. 08/2014 – Central Excise (N.T.), Rule 9(1) of the Central Excise Rules has been amended to include the importers, issuing an invoice on which Cenvat Credit can be taken, in the list of persons who are required to obtain registration under the Central Excise Act. Therefore, the existing assessees (who are registered as a 'dealer') shall obtain separate registration number as an 'importer' (if dealing in imported goods). Also, the Assessees have to file two different returns and maintain records as required in the statute separately as 'importer' and 'Dealer' registration.

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