INDIRECT TAX EXPRESS

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FROM THE EDITORIAL TEAM

Swachh Bharat Cess- An Insight

As the Finance minister, Arun Jaitley had proposed in Budget 2015-16 to levy a Swachh Bharat cess of up to 2% on all or certain services, the Finance Ministry has notified, a Swachh Bharat Cess at the rate of 0.5% on all services, which are presently liable to service tax with effect from 15th November 2015, apprising that *"Swachh Bharat cess is not another tax but a step towards involving each and every citizen in making contribution to Swachh Bharat. The proceeds from this cess will be exclusively used for Swachh Bharat initiatives"*

The Salient Features of Swachh Bharat Cess are as follows:-

- Swachh Bharat Cess is leviable as service tax on all the taxable services at the rate of 0.5% of the value of taxable service w.e.f. 15.11.2015.
- Swachh Bharat Cess is not leviable on services which are exempt from service tax or those covered under the negative list of services.
- Swachh Bharat Cess would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax. i.e., effective rate of service tax plus Swachh Bharat Cess would be [14% + 0.5%]
- It is required to be charged separately on the invoice, accounted for separately in the books of account and also paid separately under the following separate accounting code:

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

- Air travel agent, life insurance premium, purchase and sale of foreign currency and services by lottery distributors/selling agents have the option to pay SBC as determined as per the following formula:-

  $$\text{Service Tax liability [calculated as per sub-rule (7), (7A), (7B) or (7C)]} \times \frac{0.5\%}{14\%}$$

  [Notification No. 25/2015-ST dated 12-11-2015]

<u>Abatement</u>:

- Swachh Bharat Cess would be levied on the same percentage of value on which service tax is leviable. i.e. Swachh Bharat Cess will be calculated on abated value. **[Notification No. 23/2015-ST dated. 12-11-2015]**

  For example, in the case of GTA, [Service Tax + SBC] % would be (14% Service Tax + 0.5% SBC) X 30% = 4.35% (4.20%+0.15%)

<u>Reverse Charge</u>:

- Swachh Bharat Cess is also applicable in case of reverse charge. **[Notification No. 24/2015-ST dated 12.11.2015].**

Inside this issue:

GST NEWS

Finance minister, Mr. Arun Jaitley, said on 16.11.2015 that the government would make all efforts to persuade the opposition for the passage of Constitution amendment bill for implementation of GST in the winter session. He is open to meeting top opposition leaders, including Rahul Gandhi, to resolve a parliamentary deadlock over the proposed goods-and-services tax (GST).

IDT NEWS

India's indirect tax collections have increased by 36% to Rs. 3.83 lakh crore during April-October 2015, as compared to April-October 2014, on the back of a spurt in economic activity, excise duty hikes and an increase in service tax rates. The target growth rate for 2015-16 is 18.8%.

Chief Economic Advisor Arvind Subramanian said that - Growth in collection of indirect taxes in the first seven months of the current fiscal shows robust GDP expansion.

Point of Taxation:

- As per section 119 (5) of the Finance Act, 2015, the provisions of Chapter V of the Finance Act, 1994, and the rules made thereunder are applicable to SBC also. Therefore, Place of Provision of Service Rules, 2012 and Point of Taxation Rules, 2011 would be mutatis mutandis applicable to Swachh Bharat Cess.

  Hence, rule 5 of the Point of Taxation Rules would be applicable in this case. Therefore, SBC will be payable on services which are provided on or after 15.11.2015, invoice in respect of which is issued on or after that date and payment is also received on or after that date. In cases where payment has been received before the service became taxable and invoice is raised within 14 days, i.e. upto 29.11.2015, the service tax liability does not arise.

Cenvat Credit:

- SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.
- As SBC is not integrated in the Cenvat Credit chain, hence, reversal of SBC is not required under Rule 6 of Cenvat Credit Rules, 2004.

The sprit behind the levy and collection of Swachh Bharat Cess is highly appreciable but the levy comes as a burden to the common man with increase in the tax rate. Although Swachh Bharat Cess has been referred as cess, it is yet leviable on the value of taxable service and not on the amount of service tax. Furthermore, non-availability of cenvat credit on Swachh Bharat Cess will lead to cascading effect of taxes. Apart from this, GST is proposed to be implemented with effect from 01.04.2016 which will be a single taxation statute in indirect taxes where no cess, surcharge etc. are supposed to be included. Hence, levy of Swach Bharat Cess at this juncture appears to be a move in no direction.

NOTIFICATIONS & CIRCULARS

• Central Government, vide **Notification No. 43/2015-Central Excise** dated **06.11.2015**, has amended the notification no. 12/2012-CE dated 17.03.2012 to revise the effective rates of duty for certain specified goods of Chapters 1 to 98.

• Central Government issued **Notification No. 21/2015-Service Tax** dated **06.11.2015** to bring Swachh Bharat Cess into force from the 15th day of November, 2015.

• Central Government, vide **Notification No. 22/2015-Service Tax** dated **6.11.2015**, clarifies that Swachh Bharat Cess will not be leviable on services which are exempt from service tax or those covered under the negative list of services.

• Central Government, vide **Notification No. 23 /2015-Service Tax** dated **12.11.2015**, has amended notification no. 22/2015-ST dated 06.11.2015 and clarified that value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.

• Central Government, vide **Notification No. 24 /2015-Service Tax** dated **12.11.2015**, provides that notification no. 30/2012-ST dated 20.06.2012, containing services for which service tax is payable under Reverse Charge Mechanism, shall be applicable for the purposes of Swachh Bharat Cess mutatis mutandis.

• Central Government, vide **Notification No. 25/2015-Service Tax** dated **12.11.2015**, has provided the manner of calculation of Swachh Bharat Cess in respect of alternate tax rate on various services.

QUIZ!!!

1. What is the revised monetary limit for arrest of a person in case of evasion of Central Excise duty or Service Tax or the misuse of cenvat credit?

2. State whether True or False – "Summons cannot be issued by a Superintendent."

3. Mention any two services which are specifically excluded from the definition of "input service" for the purpose of availment of cenvat credit under Cenvat Credit Rules, 2004.

(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- **B-8 Bond**
Reply to Q2– **3 months from date of invoice**
Reply to Q3– **10 crores**

Reply given by:
1. **Gunjan Baweja,** baweja.gunjan@gmail.com
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CASE UPDATES

1. **M/s. Geojit BNP Paribas Financial Services Ltd. vs. Commr. of C.Ex., Cus. & S.T., Kochi [2015 (39) S.T.R. 706 (Ker.)]**

Issue: - Whether service tax paid mistakenly on export of Financial Services can be rejected on the ground of limitation under Section 11B of Central Excise Act, 1944?

Decision- The Appellant wrongly paid service tax on services qualified as export of services, and hence, claimed a refund for the same. The refund claim was rejected since it was filed beyond one year from the relevant date as provided u/s. 11B of the Central Excise Act. In this respect, the Hon'ble Kerala High Court held that in this case the levy was purely on account of mistake of fact in understanding the law. In that view of the matter, it has no colour of tax for the purpose of levy by the department. The distinguishing feature for attracting the provisions under Section 11B is that the levy should have the colour of validity when it was paid and only consequent upon interpretation of law or adjudication, the levy is liable to be ordered as refund. When payment was effected, if it has no colour of legality, Section 11B is not attracted.

2. **Aruna Constructions vs. Commr. of C.Ex. & S.T., Visakhapatnam-I [2015 (39) S.T.R. 608 (A.P.)]**

Issue: - Whether the learned Tribunal can decide the application for waiver of pre-deposit without having a statement of undue hardship, which is concomitant to exercise the jurisdiction?

Decision- The Hon'ble Andhra Pradesh High Court held that according to us, unless the application for waiver of pre-deposit is made pleading undue hardship, the same cannot be entertained, not to speak of passing any order either adversely or beneficially. This sort of exercise is without jurisdiction. Therefore, the impugned judgement and order of the Tribunal was set aside and the application made was dismissed. However, it was open for the appellant to make a fresh application for waiver of pre-deposit setting up the ground as required by the law. If such an application was made within fortnight from date, then that fresh application shall be considered by the learned Tribunal without being swayed or influenced by the impugned judgement and order.

3. **Ideal Road Builders P. Ltd. vs. Commr. Of S.T., Mumbai [2015 (40) S.T.R. 480 (Tri. – Mumbai)]**

Issue: - Whether collection of toll on behalf of NHAI would be considered as any service rendered by the appellant under the category of Business Auxiliary Service?

Decision- The Hon'ble Mumbai CESTAT held that the appellant herein is not promoting or marketing or selling goods produced by a client nor is he promoting or marketing services provided by the client, inasmuch that undisputedly NHAI is a statutory body which has been constituted by the National Highway Authorities of India Act, 1988; has been in force from 1988 and it gives the NHAI a statutory position. Hence, since the appellant is not rendering any service which is incidental or auxiliary on behalf of NHAI, the collection of tolls by the appellant is not considered as Business Auxiliary service provided to NHAI.

4. **Insulators & Electricals Company vs. Commr. of C.Ex., Bhopal [2015 (313) E.L.T. 223 (Tri. – Del.)]**

Issue: - Whether transportation charges shall be included in the value of goods sold at factory gate for payment of excise duty as per Rule 5 of Valuation Rules, 2000?

Decision- The Hon'ble Delhi CESTAT held that it is undisputed that the goods in question were sold at the factory gate, and therefore, the factory gate itself is the place of removal by the customer. As such for the purpose of determining excise duty, the transaction value is the price of goods mentioned in the invoice, excluding the transport charges which admittedly were separately mentioned. Merely because the appellant has made profit on transportation from the place of removal to the place of delivery, it cannot be said that the aforesaid profit has any co-relation with the goods cleared to factory gate and thus, he cannot be asked to pay excise duty on such freight.

FREQUENTLY ASKED QUESTIONS

"If you don't build your own dream, someone else will hire you to help them build theirs."

-Dhirubhai Ambani

Query 1: Mr. B is an insurance agent who has received a commission of Rs. 7 lakhs against the services rendered to Insurance Company. Service tax in this respect is paid by the Insurance Company under Reverse Charge mechanism. Now if Mr. B has also let out an immovable property to M/s. PQR Ltd. and earns taxable income of Rs. 5 lakhs p.a., whether he can avail benefit of SSI exemption under Notification No. 33/2012-ST?

Reply by e-newsletter team: As per proviso (ii) to Para 1 of Notification No 33/2012-ST dated 20.06.2012, nothing in the notification shall apply to such value of taxable service, in respect of which service tax shall be paid by service recipient under reverse charge mechanism. This implies that when service receiver is liable to pay service tax, the value of services of such service provided is not to be considered while calculating the basic exemption limit. Hence, the value of service provided as an insurance agent is not to be considered while calculating the exemption limit of Rs. 10 lakhs and Mr. B can claim the benefit of such basic exemption provided to Small Service Providers.

Query 2: M/s. ABC Ltd. is an Indian company which has a branch in Dubai. The Dubai branch earns a commission income from USA for selling machinery in India. Whether such transaction of import of machinery by the Indian buyer will attract service tax, where service is being provided by the Dubai branch but billing is done directly by the American company to the Indian buyer?

Reply by e-newsletter team: Explanation 3(b) to section 65B(44) of Finance Act, 1994 introduced w.e.f. 1.7.2012 reads as- *An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons*. Hence, the service provided by the Dubai Branch to earn commission income from USA will be said to have been provided by a distinct entity in Dubai. Thus, since both the service provider (Dubai Branch) and service recipient (American Co.) are located outside India, the service shall also be considered to be provided outside India, as per the Place of Provision of Services Rules, 2012. As a result, no service tax should be attracted on the given transaction in India.

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