

SUMMARY OF IMPORTANT CHANGES IN SERVICE TAX
MADE/PROPOSED BY BUDGET 2016-17

A. Changes in Finance Act, 1994

1. Amendments in the Negative List (Section 66D)

- **Entry No. (l)** – covering **specified educational services** is proposed to be omitted. Consequently, the definition of “approved vocational education course” [Section 65B (11)] is also proposed to be omitted. *[To be effective from the date of enactment of Finance Bill, 2016]*
- **Entry No. (o)(i)** - The existing entry covering “**service of transportation of passengers, with or without accompanied belongings, by a stage carriage**” is proposed to be omitted. *[To be effective from 01.06.2016]*
- **Entry No. (p)(ii)** - The existing entry covering “*services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance*” is proposed to be omitted. *[To be effective from 01.06.2016]*

The domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services (subject to fulfillment of the other existing conditions). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Implication: Basically ocean freight with respect to import of goods into India has become liable to service tax. Although credit of service tax is made available to the manufacturers or service providers, in case of traders, it will add to their cost of purchase. Also, ocean freight is included in the assessable value for calculation of customs duty. Hence it will lead to double taxation of ocean freight.

Further, ocean freight in relation to export of goods out of India is no more an exempt service for the purpose of Cenvat Credit Rules. Accordingly, cenvat credit of duty paid on inputs or capital goods or service tax paid on input services have been made available to the shipping lines.

2. Other Amendments in Finance Act, 1994

[To be effective from the date of enactment of the Finance Bill, 2016]

➤ **Lottery distributor or selling agent** – The Explanation 2 to section 65B(44) of the Finance Act, 1994 has been proposed to be amended to clarify that “*activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998)*” is leviable to service tax.

➤ **Declared Services (Section 66E)** – A new entry “*Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof*” has been proposed to be declared as a service under section 66E of the Finance Act, 1994, so as to make it clear that assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of intangible goods.

➤ **Section 67A** - Section 67A of the Finance Act, 1994 has been proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. *[To be effective from 01.03.2016]*

➤ **Section 73** - The **limitation period** for recovery of service tax not levied or paid or short- levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is proposed to be enhanced by one year, i.e., from 18 months to 30 months from the date of such non-levy/short levy/short paid/erroneous refund.

➤ **Section 75** – Section 75 of the Finance Act, 1994 has been proposed to be amended to charge a higher **rate of interest** from a person who has collected any amount as service tax from the service recipient but has failed to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due. The new interest rates are given as below:

Sl. No.	Situation	Rate of Simple Interest
1.	Collection of any amount as service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due	24 %
2.	Other than in situations covered under serial number 1 above	15 %

Implication: This is a welcome change as earlier interest rate was as high as 30% if payment is delayed beyond one year. Further, there was no relief in cases where

service tax was not collected due to different interpretations. This anomaly is now corrected.

➤ **Section 78A** – An explanation is proposed to provide that penalty proceedings under section 78A shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under section 76 or section 78.

Implication: This is again a welcome change where no personal penalty will be levied on the directors of the company if the penalty proceedings under section 76/78 are closed in case of company assessee.

➤ **Section 89** - The monetary limit for filing complaints for punishable offences is proposed to be enhanced from Rs. 50 lakhs to Rs. 2 crore.

➤ **Sections 90 and 91** – Under service tax laws, the power to arrest is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above the threshold of Rs. 2 crore.

Implication: This is again a long awaited change. Earlier there was no specific condition that assessee should have collected the tax and not paid the same to the government for making an arrest. Now the ceiling for making arrest is also enhanced from Rs. One crore to two crore and that too if the assessee collected the tax but not deposited the same.

➤ **Section 93A: Power to grant Rebate** - Section 93A of the Finance Act, 1994 has been amended so as to enable allowing of rebate by way of notification as well as rules.

➤ **Retrospective effect to notification No. 01/2016- ST** - Notification No. 41/2012- ST, dated 29.06.2012 was amended vide notification No.1/2016-ST dated 03.02.2016 so as to, *inter alia*, allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods, for export of the said goods. The said amendment has been given retrospective effect from the date of application of the parent notification, i.e., from 01.07.2012. Time period of one month (from the date of commencement of the Finance Act, 2016) is proposed to be allowed to the exporters whose claims of refund were earlier rejected in absence of any such amendments.

➤ **Service Tax exemption to canal, dam or other irrigation works with retrospective effect** - Definition of “*Governmental authority*” was amended with effect from 30.01.2014 so as to exempt services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works

provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 01.07.2012 to 29.01.2014.

Refund of Service Tax paid on the said services during the period from the 01.07.2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date of enactment of the Finance Bill, 2016.

➤ **Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption** – Certain exemptions from service tax, which were withdrawn w.e.f. 01.04.2015, have been restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption has been restored till 31.03.2020. *[Notification No. 25/2012-ST as amended by Notification No. 09/2016-ST dated 01.03.2016]*. The details of such services are:

- services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –
 - i. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - ii. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - iii. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;
- services by way of construction, erection, etc. of original works pertaining to an airport, port.

B. Information Technology Software [Notification No. 11/2016-ST dated 01.03.2016]

➤ With effect from 21.12.2010, media falling under Chapter 85 with recorded Information Technology Software has been notified under section 4A of the Central Excise Act. Accordingly, Central Excise duty/CVD is to be paid on the value of such media with recorded Information Technology Software and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media under the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder. In respect of transactions involving supply of

such media bearing RSP, not amounting to sale/deemed sale, service tax is being exempted. Thus, only Central Excise duty is levied on such transactions.

➤ In certain situations like delivering customized software on media, such media with recorded Information Technology Software, is not required to bear the RSP when supplied domestically or imported. Difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation – levy of Central Excise duty/CVD as well as service tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP, is being exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfillment of certain conditions. Thus, the levy of Central Excise duty/CVD and service tax will be mutually exclusive.

C. Krishi Kalyan Cess [To be effective from 1st Day of June, 2016]

➤ An Additional cess, to be called the Krishi Kalyan Cess, is proposed to be imposed on all taxable services at the rate of 0.5% on the value of taxable services. Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

➤ The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services.

Impact/Comments: Effectively the total service tax will become 15% with the introduction of this Krishi Kalyan Cess as there is already .5% Swach Bharat Cess introduced last year.

D. Amendments in the Mega Exemption Notification[25/2012-ST]

[To be effective from 1st Day of April, 2016, unless otherwise provided]

1. New Entries proposed to be inserted in the notification :

➤ **Sl. No 26C** - The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund

Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 is being exempted from service tax.

➤ **Sl. No 51-** Services provided by Securities and Exchange Board of India (SEBI) set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are being exempted from service tax.

➤ **Sl. No 49-** Services provided by Employees' Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are being exempted from service tax.

➤ **Sl. No 52-** Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of cold chain knowledge dissemination are being exempted from service tax.

➤ **Sl. No 50-** Services provided by Insurance Regulatory and Development Authority (IRDA) of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 are being exempted from service tax.

➤ **Sl No 26(q)** - Services of general insurance business provided under 'Niramaya' Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies are being exempted from service tax.

➤ **Sl No 16-** The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased from **Rs 1 lakh** to **Rs 1.5 lakh** per performance.

➤ **Sl No 9B-** Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and Fellowship Programme in Management are being exempted from service tax. *[This shall be effective from 1st March, 2016]*

➤ **Sl No 9C-** Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax.

➤ **Sl No 9D-** Services provided by way of skill/vocational training courses certified by National Council for Vocational Training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners under the Ministry of Rural Development are being exempted from service tax.

➤ **Sl No 13(ba)** - Services by way of construction, erection , completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works pertaining to the “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers, is being exempted from service tax. *[This shall be effective from 1st March, 2016]*

➤ **Sl No 13(bb)** - Services by way of construction, erection, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works pertaining to the “Beneficiary-led individual house construction / enhancement” component of Housing for All (HFA) (Urban) Mission/ Pradhan Mantri Awas Yojana (PMAY) is being exempted from service tax. *[This shall be effective from 1st March, 2016]*

➤ **Sl No 14(ca)** - Services by way of construction, erection, commissioning or installation of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority under the “Affordable housing in partnership” component of PMAY or any housing scheme of a State Government are being exempted from service tax. *[This shall be effective from 1st March, 2016]*

➤ **Sl No 12A-** Services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –

- i a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- ii a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- iii a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

[This shall be effective from 1st March, 2016]

➤ **Sl No 14A-** Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port. *[This shall be effective from 1st March, 2016]*

Impacts/Comments: The above two exemptions (SL No. 12A & 14A) were withdrawn from mega exemption notification through last year budget with effect from 01.04.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

2. Entries proposed to be removed from the notification resulting in withdrawal of exemption:

➤ **S. No. 6 (b) & (c)** - Exemption presently available on following services is being withdrawn:

- Service provided by a senior advocate by way of legal services to an advocate or partnership firm of advocates providing legal services & to a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession; [“senior advocate” has the meaning assigned to it in section 16 of the Advocates Act, 1961 (25 of 1961)];
- Service provided by a person represented on an arbitral tribunal to an arbitral tribunal.

The other exemptions covered under S.No. 6 of notification No. 25/12-ST shall continue unchanged.

Impact/comments: The service tax in the above instances would be levied under forward charge i.e., service provider would be liable to pay service tax.

➤ **S. No 23(c)** - Exemption to service of transport of passengers with or without accompanies belongings by ropeway, cable car or aerial tramway is being withdrawn. The other exemptions covered under S.No. 23 of notification No. 25/12-ST shall continue unchanged.

➤ **S. No. 14(a)** - Exemption to services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro is being withdrawn. *[This shall be effective on contracts entered into on or after 1st March’2016.]* The other exemptions covered under S.No. 14 of notification No. 25/12-ST shall continue unchanged.

3. Entries being incorporated in the Notification, to continue exemption to certain activities that are presently covered by the

Negative List entries which are being omitted *[This shall be effective from 1st June, 2016]*

- **S. No. 53-** Services by way of transportation of goods **by an aircraft** from a place outside India up to the customs station of clearance in India were in negative list of services [clause (p)(ii) of section 66D]. As this entry is proposed to be omitted from negative list through the Finance Bill 2016, the said service is being exempted by amending notification No.25/2012-ST.
- **S. No. 23(bb)** - Services by a stage carriage were in the negative list of services [clause (o) (i) of section 66D]. As this entry is proposed to be omitted from negative list through the Finance Bill 2016, a new entry is being inserted in notification No.25/2012-ST so as to exempt services by a stage carriage other than air conditioned stage carriage.
- **Paragraph 2 clause(oa)** – Definition of educational institution amended to include services by way of:
 - (i) Pre-school education and education up to higher secondary school or equivalent;
 - (ii) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
 - (iii) Education as a part of an approved vocational education course;

E. Changes in Notification No. 26/2012-ST (Abatement Notification)
[Notification No. 8/2016-ST]

[To be effective from 1st Day of April, 2016]

- **S. No. 2** - At present abatement of 70% is presently available on service of transport of goods by rail on a condition Cenvat Credit on inputs, capital goods and input services used for providing taxable service has not been taken. It is now proposed to continue with the same level of abatement with cenvat credit of input services for transport of goods by rail (other than “transport of goods in containers by rail by any person other than Indian Railway”). A reduced abatement rate of 60% with credit of input services is being prescribed for transport of goods in containers by rail by any person other than Indian Railway by inserting new Entry No. 2A with same condition.
- **S. No. 3** - Abatement in case of ‘Transport of passengers, with or without accompanied belongings by rail’ shall be allowed on the condition that CENVAT on inputs and capital goods has not been taken under the provisions of the CENVAT Credit Rules, 2004. Earlier Cenvat credit on input services was also restricted.

- **S. No. 7** - Abatement on **transport of used household goods** by a Goods Transport Agency (GTA) is being rationalised at the rate of 60% without availment of cenvat credit on inputs, input services and capital goods by the service provider.
- **S. No. 8** - The abatement given to service provided in relation to chit which was withdrawn from abatement notification through last year budget has again been restored. Taxable Value for Services provided by a foreman of chit fund in relation to chit is 70%.
- **S. No. 9A** – A new entry (c) has been inserted in 9A to provide abatement of 60% on service of transport of passengers, with or without accompanied belongings **by carriage**.

Impact/Comments: Such service by a non-air-conditioned contract carriage has been exempted by way of exemption notification. Hence service by air conditioned carriage is being taxed @ 40%.

- **S. No. 10** – Abatement in case of ‘Transport of goods in a vessel’ shall be allowed on the condition that CENVAT on inputs and capital goods has not been taken under the provisions of the CENVAT Credit Rules, 2004. Earlier Cenvat credit on input services was also restricted.
- **S. No 11-** S. No. 11 (i) which covers Services by a tour operator in relation to a package tour has been omitted. S. No 11 (ii) which covers services solely of arranging or booking accommodation for any person in relation to a tour, abatement of 90% is still available with specified conditions.

Abatement rates in respect of services by a tour operator in relation to a tour other than services solely of arranging or booking accommodation for any person in relation to a tour is being rationalised from 75% and 60% to 70%. Consequently, the definition of “package tour” as provided in the relevant notification is being omitted
- **S.No 12-** At present, two rates of abatement have been prescribed for services of construction of complex, building, civil structure, or a part thereof, - (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than Rs 1 crore, and (b) 70% of the amount charged in case of other than (a) above, both subject to fulfilment of certain conditions prescribed therein. A uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.
- There is abatement of 60% on the gross value of renting of motor-cab services, provided no cenvat credit has been taken. It is being made clear by way of inserting an explanation in the notification No. 26/2012-ST that cost of fuel should be

included in the consideration charged for providing renting of motor-cab services for availing the abatement.

F. Changes in Notification No. 30/2012-ST (Reverse Charge Mechanism) [Notification No. 18/2016-ST]

[To be effective from 1st Day of April, 2016]

- Services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge, i.e. the service provider is being made liable to pay service tax.
- The liability to pay service tax on any service provided by Government or a local authority to business entities shall be on the service recipient. Consequently, notification No. 30/2012-ST is being amended so as to delete the words “by way of support services” appearing at Sl. No. 6 of the Table in the said notification with effect from 1st April, 2016. Further, 1st April, 2016 is being notified as the date from which the words by way of support services shall stand deleted from paragraph 1, clause A (iv), item (C) of notification No. 30/2012-ST.

G. Changes in the Service Tax Rules, 1994 [Notification No. 19/2016-ST]

[To be effective from 1st Day of April, 2016]

- 1. Rule 2(1)(d)(i)(D)(II)** have been modified to exclude senior advocates. Legal services provided by a senior advocate shall be on forward charge.
- 2. Rule 6(1):** The benefits of (a) quarterly payment of service tax and (b) payment of service tax on receipt basis, which are available to individual and partnership firms, are being extended to One Person Company (OPC) whose aggregate value of services provided is up to Rs. 50 lakh in the previous financial year. Further, the benefit of quarterly payment of service tax is also being extended to HUF.
- 3. Rule 6(7A):** The service tax liability on single premium annuity (insurance) policies has been rationalised and the effective alternate service tax rate (composition rate) has been prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.

4. **Rule 6(4):** Rule 6(4) is being amended so as to substitute the reference to the Central Excise (No. 2) Rules, 2001, with a reference to the Central Excise Rules, 2002.

5. **Rule 7:** Service tax assessee above a certain threshold will also be required to file an annual return. This change shall come into effect from 1st April, 2016. The return shall be filed by the 30th day of November of the succeeding financial year. The Form and manner will be specified in the notification in the Official Gazette by the Central Board of Excise and Customs.

6. **Rule 7B:** Sub Rule 2 has been inserted to provide that the assessee who has filed such annual return, has the option to revise such annual return within a period of one month from the date of submission of the such annual return.

7. **Rule 7c:** Sub-Rule 2 has been inserted to provide that where the annual return is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of Rs. 100 per day for the period of delay in filing of such return, subject to a maximum of Rs. 20,000/-.

H. Change in Cenvat Credit Rules, 2004 [To be effective from 1st Day of April, 2016 unless otherwise specified]

1. **Rule 2(a) –** Definition of Capital goods is being amended to allow Cenvat Credit of:

- Wagons of sub heading 860692 of the Central Excise Tariff [Clause (A) item (i)]
- Equipment and appliance used in an office located within a factory [Clause (A) condition (1)]
- capital goods even when used outside the factory for pumping of water [Clause (A) condition (1A)]

2. **Rule 2(e) –** Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of “exempted service” to allow shipping lines to take credit on inputs and input services used in providing the said service. *[to be effective from 01.03.2016]*

3. **Rule 2(k) –** Definition of Inputs is being changed to allow credit of capital goods having value up to Rs. ten thousand per piece in the same year in which they are received [Clause (iv)].

4. **Rule 2(m) –** Definition of Input Service Distributor is being amended to allow distribution of credit to an outsourced manufacturing unit.

5. Rule 4(5)(b) Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products.

6. Rule 4(6) – Validity of permission given by an AC/DC to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is being increased from 1 financial year to 3 financial years.

7. Rule 4(7) – CENVAT credit of Service Tax paid on amount charged for assignment by Government or any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. Further, where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance CENVAT credit not exceeding the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. Further, CENVAT credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.

8. Rule 6 which provides for **reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services**, is being redrafted with the objective of simplifying and rationalizing the same without altering the established principles of reversal of such credit.

➤ **Sub rule (1)** is being amended to state the principle that CENVAT credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service and that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations.

➤ **Sub Rule (2)** is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used.

➤ **Sub Rule (3)** is being amended to provide that when a manufacturer manufactures two classes of goods, namely, exempted goods and non-exempted goods or when a provider of output services provides two classes of services, namely

exempted services and non-exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to six per cent of value of the exempted goods and seven per cent of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A).

➤ **Sub Rule (3A)** is being amended to provide the procedure and conditions for calculation of credit allowed and credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-

- a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available;
- b) Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;
- c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non-exempted goods and exempted and non-exempted services in the previous financial year;
- d) Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule.

➤ **Sub Rule (3AA)** – New sub-rule is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of fifteen % p.a.

➤ **Sub Rule (3AB)** – New sub-rule is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

➤ **Sub Rule (3B)** – is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

➤ **Miscellaneous** - Following are the other changes being made in rule 6 of the Cenvat Credit Rules:

a) Explanations 3 and 4 are being inserted in rule 6(1) so as provide for reversal of CENVAT Credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a service“ under the Finance Act, 1994.

b) Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service.

c) Sub-rule (7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of “transportation of goods by a vessel from customs station of clearance in India to a place outside India” shall not be required to be reversed by the shipping lines. It may be mentioned here that this service presently qualifies as an “exempted service” on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of “exempted service” by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f 1st June 2016 after enactment of Finance Bill 2016.

9. Rule 7 dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units.

➤ It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions:

- Credit attributable to a particular unit shall be attributed to that unit only.
- Credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.
- Credit attributable to all units shall be attributed to all the units.

- An outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned.
 - The credit of service tax paid on input services, available with the Input Service Distributor as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit.
 - Provisions of rule 6 of Cenvat Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.
- Further vide **Explanation 4** Outsourced manufacturing unit is being defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944.

10. Rule 7B - is being inserted in Cenvat Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

11. Rule 9(1)(a)(i) - It is being provided that an invoice issued by a service provider for clearance of inputs or capital goods shall also be a valid document for availing CENVAT credit.

12. Rule 9(A) - is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board.

13. Rule 14(2) – This rule which prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized is being omitted. Now, whether a particular credit has been utilized or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

I. Changes in Point of Taxation Rules, 2011

The Point of Taxation Rules, 2011 have been framed under provisions of clause (a) and (hhh) of sub-section (1) of section 94, now specific powers is also being obtained under section 67A to make rules regarding point in time of rate of service tax. Thus, any doubt about the applicability of service tax rate or apparent contradiction between section 67A and POTR would be taken care of. Therefore, consequent modifications have been done in POTR.

➤ Rule 5 of POTR applies when a new service comes into the service tax net. Although in the case of new levy, provisions of Chapter V of the Finance Act, 1994, and rules made thereunder, are invariably made applicable in relation to the levy and collection of the new levy. However, doubts have been raised regarding its applicability in case of new levy. Therefore, an Explanation is being inserted in Rule 5 stating that the same is applicable in case of new levy on services.

➤ Further, in rule 5 of POTR, it is provided that in two specified situations the new levy would not apply. Another Explanation is being inserted therein stating that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable.

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

1. Amendment in Notification No. 32/2012-ST (w.e.f 01.04.2016): Service provided by Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubatees are being exempted from service tax.

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