

INDIRECT TAXES / INDIRECT TAX LAWS
AMENDMENTS BY THE FINANCE ACT, 2008

I. EXCISE

Amendments in the Central Excise Act, 1944

1. The scope of the term “excisable goods” expanded [Section 2(d)]

As per section 2(d), “excisable goods” means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. An explanation has been inserted in this clause which clarifies that “goods” include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

(Effective from 10.05.2008)

2. Provisions introduced for excise duty on the basis of capacity of production in respect of notified goods [New section 3A]

(1) Where the Central Government is of the opinion that it is necessary to safeguard the interest of revenue,

- (a) having regard to the nature of the process of manufacture or production of excisable goods of any specified description,
- (b) the extent of evasion of duty in regard to such goods or such other factors as may be relevant, specify such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules,—

- (a) provide the manner for determination of the annual capacity of production of the factory by an officer not below the rank of Assistant Commissioner of Central Excise. Such annual capacity shall be deemed to be the annual production of such goods by such factory; or
- (b) (i) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by the use of a unit of such factor; and
- (ii) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor by an officer not below the rank of Assistant Commissioner of Central Excise and such annual capacity of production shall be deemed to be the annual production of such goods by such factory:

However, where a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production:

Further, in a case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.

- (3) The duty of excise on notified goods shall be levied, at such rate, on the unit of production or, as the case may be, on such factor relevant to the production, as the Central Government may, by notification in the Official Gazette, specify, and collected in such manner as may be prescribed:

However, where a factory producing notified goods did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

- (4) The provisions of this section shall not apply to goods produced or manufactured, by a hundred per cent export-oriented undertaking and brought to any other place in India.

It has been clarified that for the purposes of section 3 of the Customs Tariff Act, 1975, the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985, read with any notification for the time being in force.

Also, the expression, 'hundred percent export-oriented undertaking' shall have the meaning assigned to it in section 3.

(Effective from 10.05.2008)

3. The provisions applicable for refund of duty extended to refund of interest [Section 11B]

Section 11B of the Central Excise Act provides for the refund of duty of excise. Now it has been amended to extend the refund of 'duty of excise' to 'refund of duty of excise and interest, if any, paid on such duty by substituting the word

- (a) "duty of excise and interest, if any, paid on such duty" for the words "duty of excise" and

- (b) "duty and interest, if any, paid on such duty" for the word "duty"

in sub-sections (1) and (2) [except in clauses (a) and (c) of the first proviso to sub-section (2)].

(Effective from 10.05.2008)

4. Scope of section 11D expanded [Section 11D(1A)]

The scope of section 11D which provides for the deposit of duty of excise collected from the buyer, has been expanded by inserting sub-section (1A) which states that every person, who

- has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or

- has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty;

from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

Consequential amendments have been made in sub-section (2) and (4) of this section.

Further, section 11DD (1) has also been consequently amended so as to make the assessee liable for payment of interest on excess duty collected from any person or where a person has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty.

(Effective from 10.05.2008)

5. Matter to be referred to the jurisdictional Chief Commissioner where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of Commissioner (Appeals) [Section 35B(2)]

Section 35B (2) deals with the right of the Committee of Commissioners of Central Excise to authorize any Central Excise Officer to appeal to the Appellate Tribunal against the order passed by the Commissioner (Appeals).

A proviso has been inserted by the Finance Act, 2008 in sub-section (2) to cover a case where the Committee of Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner (Appeals). The Committee of Commissioners shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Central Excise who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order.

It has also been clarified that "jurisdictional Chief Commissioner" means the Chief Commissioner of Central Excise having jurisdiction over the adjudicating authority in the matter.

(Effective from 10.05.2008)

6. Matter to be referred to the Board where the Committee of Chief Commissioners of Central Excise differs in its opinion on the legality or propriety of the order passed in appeal by the Commissioner [Section 35E]

Section 35E(1) deals with the power of Committee of Chief Commissioners of Central Excise to call for and examine the record of any proceeding to satisfying itself as to the legality or propriety of any decision or order passed by Commissioner of Central Excise and direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such point arising out of the decision or order as may be specified by the Committee of Chief Commissioners.

A proviso has been inserted by the Finance Act, 2008 in sub-section (1) to cover a case where the Committee of Chief Commissioners of Central Excise differs in its opinion as to

the legality or propriety of the decision or order of the Commissioner of Central Excise. The Committee of Chief Commissioners shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the order, if it is of the opinion that the decision or order passed by the Commissioner of Central Excise is not legal or proper, may direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order.

Sub-section (3) of section 35 has also been amended to provide that order passed under section 35E of the Act shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(Effective from 10.05.2008)

7. Provisions of interest introduced for delayed refund of amount deposited under the proviso to section 35F [New section 35FF]

A new section 35FF has been inserted to provide for payment of interest on pre-deposit made by an appellant who succeeds in appeal, if the amount of pre-deposit is not refunded within three months from the date of communication of the order of the appellate authority to the adjudicating authority.

Section 35FF provides that where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of the communication of the order of the appellate authority, till the date of refund of such amount.

(Effective from 10.05.2008)

Amendments in the Central Excise Tariff Act, 1985

1. Lamination or lacquering to amount to manufacture

Note 16 of Chapter 39 to the Central Excise Tariff Act, 1985 has been amended to specify that the process of lamination or of lacquering shall also amount to manufacture in addition to the process of metallization.

(Effective from 10.05.2008)

2. Definition of manufacture provided in notes aligned with the definition of manufacture provided in section 2(f)(iii) of the Central Excise Act, 1944

Notes of certain chapters in the Central Excise Tariff Act, 1985 have been amended to align the definition of processes amounting to manufacture with the definition of manufacture in section 2(f)(iii) of the Central Excise Act, 1944.

(Effective from 10.05.2008)

II. CUSTOMS

Amendments in the Customs Act, 1962

1. Scope of section 28B expanded [Section 28B(1A)]

The scope of section 28B which provides for the deposits of duty of custom collected from the buyer, has been expanded by inserting sub-section (1A) which states that “every person, who

- has collected any amount in excess of the duty assessed or determined or paid on any goods or
- has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty;

from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

Consequential amendments have been made in sub-section (2) and (4) of this section.
(Effective from 10.05.2008)

2. The necessity for the gazetted officer of customs to be empowered by Central Government for summoning persons to give evidence and produce documents dispensed with [Section 108(1)]

Section 108(1) has been amended so as to make the gazetted officer of customs more powerful. Now, it is not necessary for the gazetted officer to be empowered by Central Government for summoning persons to give evidence and produce documents i.e. gazetted can, on his own motion, summon persons to give evidence and produce documents.

(Effective from 13.07.2006)

3. Maximum penalty prescribed under section 117 increased from Rs.10,000 to Rs.1,00,000 [Section 117]

Section 117 which provides maximum penalty of Rs. 10,000 for any person

- who contravenes any provision of this Act or
- abets any such contravention or
- who fails to comply with any provision of this Act with which it was his duty to comply

where no express penalty is elsewhere provided for such contravention or failure, has been amended, to increase the maximum penalty upto Rs. 1,00,000.

(Effective from 10.05.2008)

4. Matter to be referred to the jurisdictional Chief Commissioner where the Committee of Commissioners of Customs differs in its opinion regarding the appeal against the order of Commissioner (Appeals) [Section 129A(2)]

Section 129A (2) deals with the right of the Committee of Commissioners of Customs to

direct the proper officer to appeal on its behalf to the Appellate Tribunal against the order passed by the Commissioner (Appeals).

A proviso has been inserted by the Finance Act, 2008 to cover a situation where the Committee of Commissioners of Customs differs in its opinion regarding appeal against the order of the Commissioner (Appeals). The Committee of Commissioners shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner of Customs who shall, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

It has also been explained that "jurisdictional Chief Commissioner" means the Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.'

(Effective from 10.05.2008)

5. Matter to be referred to the Board where the Committee of Chief Commissioners of Customs differs in its opinion on the legality or propriety of the order passed in appeal by the Commissioner [Section 129D(1)]

Section 129D (1) deals with the power of Committee of Chief Commissioners of Customs to call for and examine the record of any proceeding to satisfy itself as to the legality or propriety of any decision or order passed by Commissioner of Customs and direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners.

A proviso has been inserted by the Finance Act, 2008 to cover a situation where the Committee of Chief Commissioners of Customs differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Customs. The Committee of Chief Commissioners shall state the point or points on which it differs and make a reference to the Board which, if is of the opinion that the decision or order passed by the Commissioner of Customs is not legal or proper, may direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order.

Sub-section (3) of section 129D has also been amended to provide that order passed under section 129D of the Act shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.

(Effective from 10.05.2008)

6. Provisions of interest introduced for delayed refund of amount deposited under the proviso to section 129E [New section 129EE]

A new section 129EE has been inserted to provide for payment of interest on pre-deposit made by an appellant who succeeds in appeal, if the amount of pre-deposit is not refunded within three months from the date of communication of the order of the appellate authority to the adjudicating authority.

Section 129EE provides that where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (appellate authority), under the first proviso to section 129E, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 27A after the expiry of three months from the date of the communication of the order of the appellate authority, till the date of refund of such amount.

(Effective from 10.05.2008)

7. Import or export of the goods in the customs area to be regulated in the prescribed manner [Section 141]

Section 141 has been numbered as sub-section (1) thereof and, after sub-section (1) as so numbered, a new sub-section (2) has been inserted to regulate the imported or exported goods in customs area.

Sub-section (2) state that the imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as may be prescribed and the responsibilities of persons engaged in the aforesaid activities shall be such as may be prescribed.

(Effective from 10.05.2008)

8. Maximum penalty for contravention of rule or regulation increased to Rs.50,000 [Section 158(2)(ii)]

Clause (ii) of section 158(2) has been substituted by new clause (ii) to increase the maximum penalty to Rs. 50,000/- for contravention of any rule or regulation. The new clause (ii) of section 158(2) provides that any person who

- contravenes any provision of a rule or regulation or abets such contravention or,
- who fails to comply with any provision of a rule or regulation with which it was his duty to comply,

shall be liable to a penalty which may extend to Rs. 50,000.

(Effective from 10.05.2008)

III. SERVICE TAX

Amendments in Chapter V and VA of the Finance Act, 1994

1. 7 new services brought under the service tax net [Section 65]

This year seven services have been brought under the tax net with effect from 16.05.2008. These services are:

- (1) Services provided in relation to information technology software for use in the course, or furtherance, of business or commerce;

- (2) Services provided in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme;
- (3) Services provided by a recognised stock exchange in relation to securities;
- (4) Services provided by a recognised association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts;
- (5) Services provided by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts;
- (6) Services provided in relation to supply of tangible goods, without transferring right of possession and effective control of the tangible goods;
- (7) Services provided in relation to internet telecommunication.

Each of the above mentioned services have been discussed below:

(i) Information technology software services

“Information technology software” means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment [Section 65(53a)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including,—

- (i) development of information technology software,
- (ii) study, analysis, design and programming of information technology software,
- (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,
- (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,
- (vi) acquiring the right to use information technology software supplied electronically [Section 65(105)(zzzz)].

(ii) Investment management services provided under ULIP

Unit-Linked Insurance Plan (ULIP) is an insurance product offered by life insurance companies combining both risk cover and benefits of investment. ULIP being a combination product, premium amount paid under ULIP consists of risk premium and investment component. Risk premium may be for life or health or any other authorized purposes. Unlike the case of traditional life insurance policies, policyholder of ULIP can choose portfolios for investment with different investment aims such as low, medium and high-risk category or combination thereof. ULIP enables the policyholder to take part in the scheme collectively and becoming the beneficiary like mutual funds. The investment risk is borne by the ULIP policyholder.

Scope of taxable service shall include service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation.— For the purposes of this sub-clause,—

- (i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and
- (ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between,—
 - (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and
 - (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

Illustration

Total premium paid for the Unit Linked Insurance Plan Policy = Rs.100

Risk premium = Rs. 10

Amount actually invested = Rs. 85

Gross amount charged for the service provided = Rs. 5 [100-(10+85)];

- (iii) in addition to the amount referred to in clause (ii), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked life insurance business [Section 65(105)(zzzzf)].
- (iv) Stock exchange services in relation to securities

Scope of taxable service shall include service provided or to be provided to any

person, by a recognized stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities [Section 65(105)(zzzzg)].

(iv) Commodity exchange services

Scope of taxable service shall include service provided or to be provided to any person, by a recognized association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts [Section 65(105)(zzzzh)].

(v) Processing and clearing house services

“Processing and clearing house” means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to,—

- (i) the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder,
- (ii) the delivery of, and payment for, securities, goods or forward contracts;
- (iii) any other matter incidental to, or connected with, securities, goods and forward contracts [Section 65(86d)].

Scope of taxable service shall include service provided or to be provided to any person, by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts [Section 65(105)(zzzzi)].

(vi) Supply of tangible goods services

Transfer of the right to use any goods is leviable to sales tax / VAT as deemed sale of goods. Transfer of right to use involves transfer of both possession and control of the goods to the user of the goods.

Transaction of allowing another person to use the goods, without giving legal right of possession and effective control, not being treated as sale of goods, is treated as service.

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances [Section 65(105)(zzzzj)].

(vii) Internet telecommunication services

Internet telephony services have been substituted by internet telecommunication service and accordingly section 65(57a), and 65(105)(zzzu) have been amended as follows:-

“Internet telecommunication service” includes,—

- (i) internet backbone services, including carrier services of internet traffic by one internet service provider to another internet service provider,
- (ii) internet access services, including provision of a direct connection to the internet and space for the customer's web page,
- (iii) provision of telecommunication services, including fax, telephony, audio conferencing and video conferencing, over the internet [Section 65(57a)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person, in relation to internet telecommunication service [Section 65(105)(zzzu)].

Further, as a consequential amendment section 65(109a) (defining telecommunication services) has also been amended so as to substitute the reference to services provided in relation to internet telephony with internet telecommunication service.

2. Scope of existing taxable services amended [Section 65]

(i) Cargo handling service

The definition of cargo handling services has been amended so as to include services of packing together with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking, under cargo handling service. Now the definition of cargo handling services reads as follows:

“Cargo handling service” means loading, unloading, packing or unpacking of cargo and includes,—

- (a) cargo handling services provided for freight in special containers or for non containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and
- (b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking,

but does not include, handling of export cargo or passenger baggage or mere transportation of goods [Section 65(23)].

(ii) Tour operator's service

The definition of tour operator has been amended so as to include services provided in relation to a journey from one place to another in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist

vehicles. Now the new definition reads as follows:

“Tour operator” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

Explanation — For the purposes of this clause, the expression “tour” does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field [Section 65(115)].

(iii) Business auxiliary service

Services provided in relation to promotion or marketing of service provided by the client is leviable to service tax under business auxiliary service. An explanation has been inserted in section 65(19) so as to clarify that services provided in relation to promotion or marketing of games of chance organized, conducted or promoted by the client are covered under the existing definition of business auxiliary service.

Also from sub-clause (vi) of section 65(19), the word “any information technology service and” and explanation (b) has been deleted. Now the definition of business auxiliary service reads as follows:

“Business auxiliary service” means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo.

(iii) any customer care service provided on behalf of the client; or

(iv) procurement of goods or services, which are inputs for the client; or

Explanation — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, “inputs” means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to

(vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act.

Explanation — For the removal of doubts, it is hereby declared that for the purposes of this clause “commission agent” means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

- (i) deals with goods or services or documents of title to such goods or services; or
- (ii) collects payment of sale price of such goods or services; or
- (iii) guarantees for collection or payment for such goods or services; or
- (iv) undertakes any activities relating to such sale or purchase of such goods or services [Section 65(19)].

(iv) Renting of immovable property service

In the definition of renting of immovable property service provided under section 65(90a), the explanation occurring at the end has been numbered as explanation 1 and after the explanation as so numbered, explanation 2 has been inserted. The new explanation clarifies that “renting of immovable property” includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property.

(v) Foreign exchange broker’s service

Services provided by foreign exchange brokers as an intermediary in relation to purchase or sale of foreign currency on a commission/brokerage basis was chargeable to service tax as they indicate the consideration (commission) for the services provided explicitly. Whereas money changers/authorised dealers of foreign exchange providing same services may not necessarily indicate the consideration explicitly and escape service tax. Now section 65(12), and 65(105)(zzk) have been amended to bring money changer and authorised dealer in the net of service tax.

Section 65(105)(zzk) has been substituted by a new section 65(105)(zzk). The new section reads as follows:

Scope of taxable service shall include service provided or to be provided to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (zm).

(vi) Banking and other financial services

The definition of “banking and other financial services” given in section 65(12) has been amended by the Finance Act, 2008 so as to bring the money changer and authorised dealer of foreign exchange in the net of service tax. The amended definition is given below:

“Banking and other financial services” means —

- (a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely :—
 - (i) financial leasing services including equipment leasing and hire-purchase;
Here, “financial leasing” means a lease transaction where-
 - (i) contract for lease is entered into between two parties for leasing of a specific asset;
 - (ii) such contract is for use and occupation of the asset by the lessee;
 - (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
 - (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment.
 - (ii) merchant banking services;
 - (iii) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
 - (iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
 - (v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
 - (vi) provision and transfer of information and data processing; and
 - (vii) banker to an issue services; and
 - (viii) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts.
- (b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a).

Here, “purchase or sale of foreign currency, including money changing” includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately.

(vii) Consulting engineer’s service

Consultancy services in the field of computer software engineering has been included within the scope of taxable services provided by a consulting engineer and the word “to a client” has been substituted by the word “to any person” by amending the definition of taxable consulting service provided under sub – clause (g) of clause (105) of section 65. Also in the definition of “consulting engineer” given in section 65(31), the words “to a client” have been substituted by the word “to any person”. Now the amended definition of “consulting engineer” given in section 65(31) and scope of taxable service read as follows:

"Consulting engineer" means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering – Section 65(31).

Scope of taxable service shall include service provided or to be provided to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering [Section 65(105)(g)].

It has also been clarified that for the purposes of this sub-clause, services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause.

(viii) Management, maintenance or repair service

Section 65(64) defines taxable management, maintenance or repair services. The Finance Act, 2008 has substituted explanation given in this clause by a new explanation. Now the amended definition reads as follows:-

“Management, maintenance or repair” means any service provided by—

- (i) any person under a contract or an agreement; or
- (ii) a manufacturer or any person authorised by him, in relation to,—
 - (a) management of properties, whether immovable or not;
 - (b) maintenance or repair of properties, whether immovable or not; or
 - (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.

Explanation - For the purposes of this clause,—

- (a) “goods” includes computer software;
- (b) “properties” includes information technology software.

(ix) Mandap keeper's service

Section 65(105)(m) defines taxable mandap keeper's services. The Finance Act, 2008 has amended the said sub-clause by substituting the word "any person" and "such person" for the word "a client" and "the client", wherever they occur. Now the amended definition reads as follows:

Scope of taxable service shall include any service provided or to be provided to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer.

(x) Technical testing and analysis services

Section 65(106) defines taxable technical testing and analysis services. The Finance Act, 2008 has amended the said clause by inserting the words "information technology software or" after the words "goods or material or". Now the amended definition is as follows:

"Technical testing and analysis" means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals.

It is clarified that technical testing and analysis includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.

(xi) Technical inspection and certification service

Section 65(108) defines taxable technical inspection and certification services. The Finance Act, 2008 has amended the said clause by substituting the words "process or material or information technology software" for the words "process or material". Now the amended definition is as follows:

"Technical inspection and certification" means inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels.

(xii) Manpower recruitment agent's service

Section 65(68) defines manpower recruitment or supply agency. The Finance Act, 2008 has amended the said clause by substituting the words "to any other person" for the words "to a client". Now the amended definition reads as follows:

"Manpower recruitment or supply agency" means any person engaged in providing

any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person.

(xiii) On-line information and database access and/or retrieval services

Section 65(75) defines on-line information and database access or retrieval. The Finance Act, 2008 has amended the said clause by substituting the words “to any person” for the words “to a customer”. Now the amended definition reads as follows:

"On-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network.

(xiv) Scientific or technical consultancy service

Section 65(92) defines scientific or technical consultancy. The Finance Act, 2008 has amended the said clause by substituting the words “to any person” for the words “to a client”. Now the amended definition is as follows:

"Scientific or technical consultancy" means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organization, to any person, in one or more disciplines of science or technology.

3. The words “to any person” substituted for the words “to a client” in 22 services

In the case of following services, the words “to any person” shall be substituted for the words “to a client”:-

- (1) Advertising agency services – Section 65(105)(e);
- (2) Custom house agent's services – Section 65(105)(h);
- (3) Clearing & forwarding agent's services – Section 65(105)(j);
- (4) Manpower recruitment or supply agency's services – Section 65(105)(k);
- (5) Architect's services – Section 65(105)(p);
- (6) Interior decorator's services – Section 65(105)(q);
- (7) Management or business consultant's services – Section 65(105)(r);
- (8) Practising chartered accountant's services – Section 65(105)(s);
- (9) Practising cost accountant's services – Section 65(105)(t);
- (10) Practising company secretary's services – Section 65(105)(u);
- (11) Real estate agent's services – Section 65(105)(v);
- (12) Security agency's services – Section 65(105)(w);
- (13) Credit rating agency's services – Section 65(105)(x);
- (14) Market research agency's services - Section 65(105)(y);
- (15) Underwriter's services – Section 65(105)(z);
- (16) Scientific or technical consultancy services – Section 65(105)(za);

- (17) Convention services – Section 65(105)(zc);
- (18) Video – tape production services – Section 65(105)(zi);
- (19) Sound recording services – Section 65(105)(zj);
- (20) Event management services – Section 65(105)(zu);
- (21) Outdoor catering – Section 65(105)(zzt);
- (22) Pandal or shamiana services – Section 65(105)(zzw).

4. The words “to any person” substituted for the words “to a customer” in 14 services

In the case of following services, the words “to any person” shall be substituted for the words “to a customer”:-

- (1) Courier services – Section 65(105)(f);
- (2) Air travel agent’s services – Section 65(105)(l);
- (3) Photography services – Section 65(105)(zb);
- (4) On – line information and database access and/or retrieval services – Section 65(105)(zh);
- (5) Banking and other financial services – Section 65(105)(zm);
- (6) Authorised service station’s services – Section 65(105)(zo);
- (7) Beauty parlour’s services – Section 65(105)(zq);
- (8) Dry cleaning services – Section 65(105)(zt);
- (9) Rail travel agent’s services – Section 65(105)(zz);
- (10) Errection, commissioning or installation services – Section 65(105)(zzd);
- (11) Management, maintenance or repair services – Section 65(105)(zzg);
- (12) Transport of goods by road (by a goods transport agency) services – Section 65(105)(zzp);
- (13) Survey and exploration of mineral services – Section 65(105)(zzv);
- (14) Travel agent’s services (other than air/rail travel agents) – Section 65(105)(zzx).

(The above-mentioned amendments in respect of all the above services are effective from 16.05.2008)

5. In case of associated enterprise, gross amount charged for the taxable service to include any amount credited or debited to any account of the person liable to pay service tax [Section 67]

The definition of “gross amount charged” given in explanation (c) to section 67 has been modified. The amended definition of gross amount charged reads as follows:

“Gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book

adjustment, and any amount credited or debited, as the case may be, to any account, whether called "suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

Also a new clause (7b) has been inserted in section 65 which defines "associated enterprise" as follows:

"Associated enterprise" has the meaning assigned to it in section 92A of the Income tax Act, 1961."

(Effective from 10.05.2008)

6. A new scheme for submission of returns through service tax return preparers introduced [New section 71]

The Finance Act, 2008 has inserted a new section 71 to provide for the scheme for submission of Returns through service tax returns preparers. The provisions of section 71 are as follows:

- (1) Without prejudice to the provisions of section 70, the Board may, by notification in the Official Gazette, frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer to act as such under the Scheme.
- (2) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.
- (3) For the purposes of this section,—
 - (a) "Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section;
 - (b) "person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.
- (4) The Scheme framed by the Board under this section may provide for the following, namely:—
 - (a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);
 - (b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;
 - (c) the code of conduct for the Service Tax Return Preparer;
 - (d) the duties and obligations of the Service Tax Return Preparer;
 - (e) the circumstances under which the authorisation given to a Service Tax Return

Preparer may be withdrawn;

- (f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

Consequently section 94 has also been amended to provide that rules for framing the scheme for filing service tax returns through service tax return preparers shall be laid before each house of Parliament.

(Effective from 10.05.2008)

7. Provisions for best judgement assessment introduced [New section 72]

The Finance Act, 2008 has inserted a new section 72 to empower the central excise officer to make best judgement assessment. The provisions of new section are as follows:

If any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70;
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder,

the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

(Effective from 10.05.2008)

8. Specific penalty for specific contraventions introduced [Section 77]

The existing section 77 has been substituted by a new section 77 which is as follows:

(1) Any person,—

- (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;
- (b) who fails to keep, maintain or retain books of account and other documents as required in accordance with the provisions of this Chapter or the rules made thereunder, shall be liable to a penalty which may extend to five thousand rupees;
- (c) who fails to—
 - (i) furnish information called by an officer in accordance with the provisions

of this Chapter or rules made thereunder; or

- (ii) produce documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder; or
- (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry,

shall be liable to a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

- (d) who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to five thousand rupees;
- (e) who issues invoice in accordance with the provisions of the Act or rules made thereunder, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to five thousand rupees.

- (2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to five thousand rupees."

(Effective from 10.05.2008)

- 9. Penalty for failure to pay service tax not to apply where penalty for suppressing value of taxable service is payable [Section 78]

Section 78 has been amended by inserting a fifth proviso after the fourth proviso to provide that if the penalty is payable under section 78 (penalty for suppressing value of taxable services), the provisions of section 76 (penalty for failure to pay service tax) shall not apply.

(Effective from 10.05.2008)

- 10. Provisions of interest on delayed refund of pre-deposit made for the purpose of appeal introduced for service tax [Section 83]

Section 83 enlists the sections of the Central Excise Act, 1944 that are applicable to service tax. The Finance Act, 2008 has added section 35FF of the Central Excise Act, 1944 in the said list thereby making it applicable to the service tax matters. Section 35FF contains the provisions relating to interest on delayed refund of amount deposited under the proviso to section 35F.

(Effective from 10.05.2008)

- 11. Matter to be referred to the Board or jurisdictional Chief Commissioner where the Committee of Chief Commissioners of Excise or Committee of Commissioners of Excise differs in its opinion regarding the appeal against the order of Commissioner or Commissioner (Appeals) respectively [Section 86]

Section 86(2) provides that the Committee of Chief Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise under section 73 or section 83A or section 84, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

A proviso has been inserted by the Finance Act, 2008 in sub-section (2) to cover a case where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.

Similarly, section 86(2A) provides that the Committee of Commissioners of Central Excise may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any central excise officer to appeal on its behalf to the Appellate Tribunal against the order.

A proviso has been inserted by the Finance Act, 2008 in sub-section (2A) to cover a case where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.

An explanation has also been inserted to clarify that "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.

(Effective from 10.05.2008)

12. Central Government empowered to remove difficulties arising in implementing, classifying or assessing the value of any taxable service introduced by the Finance Act, 2008 [Section 95]

Section 95 inter alia empowers Central Government to issue orders for removing difficulties, which may arise in respect of implementing or assessing the value of any taxable service introduced by any of the Finance Acts.

Section 95 has been amended to provide that if any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated by the Finance Act, 2008, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of Chapter V of the Finance Act, 1994, remove the difficulty.

However, no such order shall be made after the expiry of a period of 1 year from 10.05.2008.

(Effective from 10.05.2008)