INDIRECT TAX LAWS

AMENDMENTS AT A GLANCE – FINANCE ACT, 2013

CENTRAL EXCISE

A. Amendments in the Central Excise Act, 1944			
S.No.	Section	Amendment made	Implication
1.	9(1)(i)	For the words, "₹30 lakh", the words "₹50 lakh" have been substituted.	Offences involving evasion of duty exceeding ₹50 lakh would attract imprisonment instead of earlier ₹30 lakh.
2.	9A(1)	Section 9A(1) has been substituted with new sub-section to make certain specified offences cognizable.	Following two offences have been made cognizable and non-bailable if the duty liability exceeds ₹ 50 lakh :- (i) Evasion of payment of duty (ii) Contravention of any of Central Excise provisions in relation to credit of any duty allowed to be utilized towards payment of excise duty.
	20 and 21		Bail can be granted only for non-cognizable offences. Cognizable offences would be non-bailable.
3.	11	Erstwhile section 11 has been re-numbered as section 11(1) and a new sub-section (2) has been inserted to section 11.	• Powers of recovery of excise duty may be extended to a Central Excise Officer/ proper officer authorised section 142 of the Customs Act also. • Money due to the Government may now be recovered from any person other than from whom money is due after giving proper notice, if that other person holds money for/on account of the first person.
4.	11A	Sub-section (7A) inserted in section 11A	In case one show cause notice has been issued, then service of a statement on the same grounds containing details of non/ short

			payment, short/ non levy or erroneously refunded duty etc. would be deemed to be service of SCN.
5.	11DDA(1)	Reference to "sub-section (1)" has been omitted.	Central Excise Officer has been empowered to attach the property belonging to person on whom notice is served under ANY sub-section of section 11A.
6.	23A(a)	Definition of activity has been substituted with a new definition	Any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him.
	23C(2)	Clause (e) to section 23C(2) amended	Advance ruling can also be sought on the issue of admissibility of credit of service tax paid or deemed to have been paid.
7.	35C(2A)	Third proviso to section 35C(2A) inserted	CESTAT has been empowered to grant stay by another 185 days:- (i) on an application made in this behalf by a party and (ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party.
8.	35D(3)	For the words, "₹10 lakh", the words "₹50 lakh" have been substituted.	Monetary limit of the Single Bench of the CESTAT to hear and dispose of appeals has been enhanced from ₹ 10 lakh to ₹ 50 lakh.
9.	37C(1)(a)		Speed post with proof of delivery or courier approved by the CBEC will also be the authorized modes of delivery of any decision or order or any summons or notices.

SERVICE TAX

S.No.	Section	Amendment	Implication
1.	65B(11)	Definition of approved vocational education course amended	(i) Courses in 'designated trades' offered by ITI/ITC affiliated to State Council of Vocational Training are also exempt. (ii) A course run by an institute affiliated to National Skill Development Corporation set up by the Government of India is now liable to service tax.
	65B(40)	Definition of any process amounting to manufacture/ production of goods amended	A process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act is also exempt from service tax.
	66D(d)(i)	The word "seed" has been omitted from the said negative list entry.	Besides seed testing, other testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes are also exempt from service tax.
2.	66BA	New section 66BA introduced	With effect from 01.07.2012, for the purpose of levy and collection of service tax, the references to erstwhile section 66 shall be construed as references to section 66B.
3.	73	New sub-section (2A) inserted in section 73	SCN issued by invoking extended period of limitation, if not found sustainable, shall be deemed to be a SCN issued for a period of eighteen months.
4.	77(1)(a)	Clause (a) to section 77(1) has been substituted with a new clause	Maximum penalty for failure to obtain registration is restricted to ₹10,000. Daily penalty of ₹ 200 per day has been done away with.
5.	78A	New section 78A inserted	Personal penalty upto ₹1,00,000 has been imposed on director, manager, secretary, or other officer found to be

			knowingly concerned with specified contraventions.
6.	86		Tribunal has been empowered to condone the delay in filing of an appeal by the assessee.
7.	89		Prosecution provisions contained in section 89 have been made more stringent with respect to non-payment of amount collected as service tax beyond six months, when the amount exceeds ₹50 lakh.
	90	New section 90 introduced	Non-payment of amount collected as service tax beyond six months, when the amount exceeds ₹50 lakh has been made a cognizable offence.
8.	91	New section 91 introduced	Powers of arrest have been introduced in service tax also.
9.		Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES) introduced	An amnesty scheme for service tax assessees known as 'Service Tax Voluntary Compliance Encouragement Scheme' is introduced to encourage the stop filers, non-filers or non-registrants or who have not disclosed their true liability in the returns filed by them to pay their tax dues without payment of interest and penalty.

CUSTOMS

A. Amendments in the Customs Act, 1962			
S.No.	Section	Amendment made	Implication
1.	11(2)(n)	Clause (n) to section 11(2) amended to include designs and geographical indications.	Central Government is empowered to prohibit the importation/exportation of goods for protection of "designs and geographical indications" also.
2.	27(1)	Third proviso inserted in section 27(1)	There would be no refund if the amount of customs duty involved is less than ₹ 100.
	28(1)	Proviso inserted in section 28(1)	There would be no recovery of the customs duty if the amount of customs duty involved is less than ₹ 100.

3.	28BA(1)		Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well.
4.	28E(a)	Definition of activity has been substituted with a new definition	Any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him.
5.	29(1)		CBEC has been empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport.
6.	30(1) 40(1)		Electronic filing of import/export manifest has been made mandatory except in cases allowed by Commissioner of Customs.
7.	47(2)		Interest free period for payment of import duty is reduced from 5 days to 2 days.
8.	49		Period of storage without warehousing is restricted to 30 days. Commissioner may extend it further by 30 days.
9.	69(1)(a)	Clause (a) to section 69(1) has been substituted with a new clause	Export of warehoused goods without payment of import duty is allowed on presenting postal export documents also.
10.	104(6)	Sub-section (6) to section 104 has been substituted with sub-sections (6) and (7)	Certain specified offences have been made non-bailable. Rest of the offences would be bailable as before.
11.	129B(2A)	Third proviso to section 129B(2A) has been inserted	CESTAT has been empowered to grant stay by another 185 days:- (i) on an application made in this behalf by a party and (ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party.

12.	129C(4)	For the words, "₹10 lakh", the words "₹50 lakh" have been substituted.	Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals is enhanced from ₹ 10 lakh to ₹ 50 lakh.
13.	Sub-clause (C) & (D) of section 135(1)(i)	For the words, "₹30 lakh", the words "₹50 lakh" have been substituted.	An offender would be punishable with an imprisonment upto 7 years and with fine:- (i) in case evasion of duty exceeds ₹50 lakh (instead of earlier ₹30 lakh), or (ii) in case of fraudulent availment of drawback or any exemption from duty for export of goods, the amount of drawback or exemption from duty exceeds ₹50 lakh (instead of earlier ₹30 lakh).
14.	142(1)	New clause (d) is inserted to section 142(1)	Money due to the Government may now be recovered from any person other than from whom money is due after giving proper notice, if that other person holds money for/on account of the first person.
15.	143A		Section 143A providing option for duty deferment for adjustment of duty payable against drawback has been omitted.
16.	144(3)	The words "if such duty amounts to ₹ 5 or more" have been omitted.	There shall be no duty liability on a sample of goods consumed/ destroyed during the course of testing/examination.
17.	146 146A(2)(b)		Reference to "customs house agents", in section 146 and 146A(2)(b) has been substituted with "customs brokers".
18.	146A(4)(b)	Clause (b) to section 146A(4) has been substituted.	Person who has committed offence under the Finance Act, 1994 has also been also disqualified to act as authorized representative.
19.	147(3)		The scope of the liability of agents of the owner/importer/exporter of any goods has been enhanced.

INDIRECT TAX LAWS

AMENDMENTS MADE BY THE FINANCE ACT, 2013

A. CENTRAL EXCISE

1. **Offences involving evasion of duty exceeding ₹50 lakh to attract imprisonment instead of earlier ₹30 lakh [Section 9(1)(i)]**

   Section 9 of the Central Excise Act, 1944 enumerates the acts that constitute an offence. Further, it provides that an offence relating to any excisable goods on which the duty leviable exceeds ₹30 lakh shall be punishable with a term of imprisonment extending to 7 years and with fine. The said monetary limit has been increased from ₹30 lakh to ₹50 lakh by the Finance Act, 2013.

   [Effective from 10.05.2013]

2. **Offences under Central Excise-Cognizable and non-cognizable**

   Prior to the Finance Act, 2013, all offences under Central Excise law were non-cognizable and bailable. In the case of *Om Prakash v. UOI 2011 (272) ELT 321 (SC)*, Supreme Court also affirmed that all the offences under the Central Excise Act are non-cognizable and bailable.

   However, the Finance Act, 2013 has amended sections 9A, 20 and 21 to overrule the aforesaid judgment to make certain offences cognizable and non-bailable. Therefore, now some offences under central excise are cognizable while others non-cognizable. Further, cognizable offences would be non-bailable and non-cognizable offences would be bailable. The said amendments have been discussed in detail as follows:-

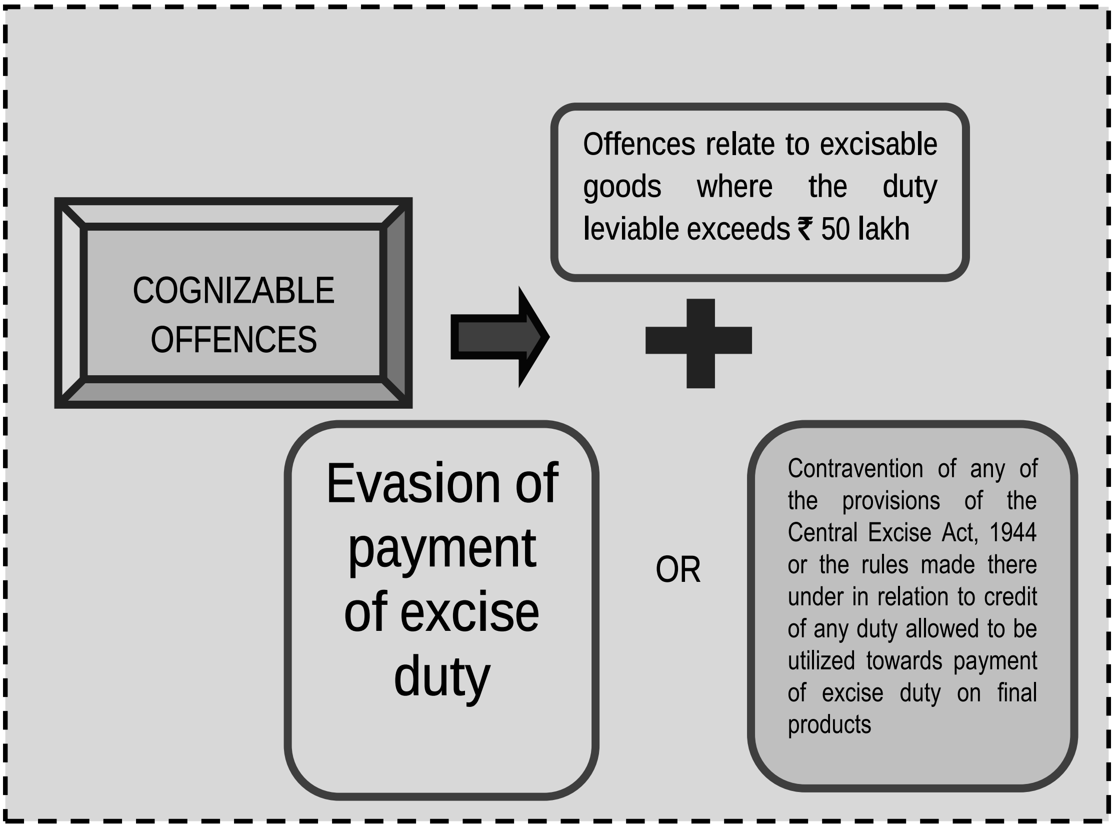
   (A) Certain offences under excise made cognizable [Section 9A(1)]

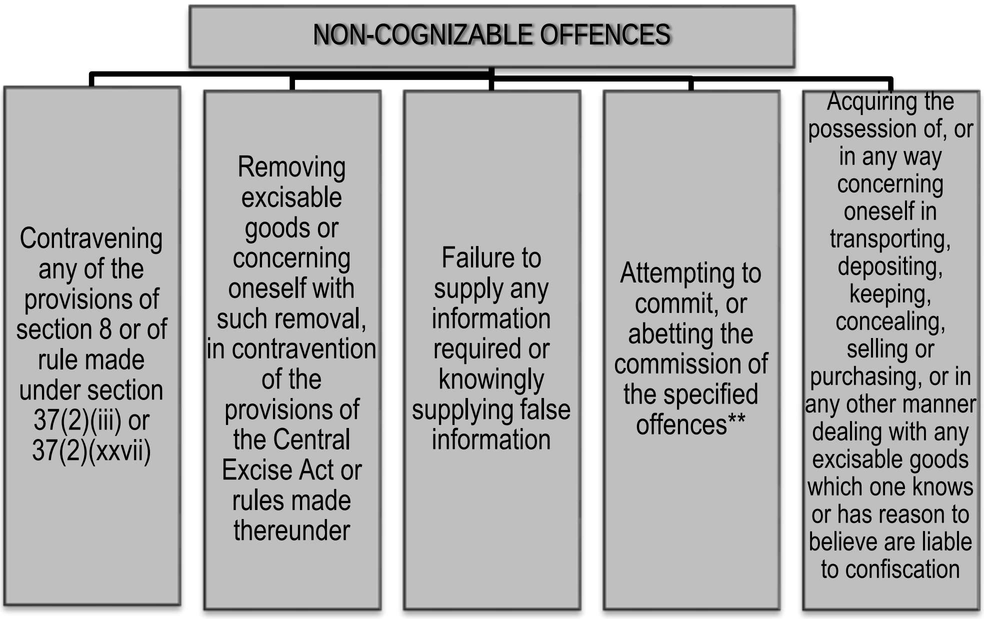
   Erstwhile position

   Earlier, all offences under Central Excise Law were non-cognizable.

   New position

   The Finance Act, 2013 has made certain offences <u>cognizable and non-bailable</u>. In case the offences are punishable under clause (b) or clause (bbbb) of section 9(1) and duty liability exceeds ₹ 50 lakh, they shall be cognizable and non-bailable. All other offences would be non-cognizable. Following diagrams depict the cognizable and non-cognizable offences:-


COGNIZABLE OFFENCES
Offences relate to excisable goods where the duty leviable exceeds ₹ 50 lakh
Evasion of payment of excise duty
OR
Contravention of any of the provisions of the Central Excise Act, 1944 or the rules made there under in relation to credit of any duty allowed to be utilized towards payment of excise duty on final products


NON-COGNIZABLE OFFENCES
Contravening any of the provisions of section 8 or of rule made under section 37(2)(iii) or 37(2)(xxvii)
Removing excisable goods or concerning oneself with such removal, in contravention of the provisions of the Central Excise Act or rules made thereunder
Failure to supply any information required or knowingly supplying false information
Attempting to commit, or abetting the commission of the specified offences**
Acquiring the possession of, or in any way concerning oneself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner dealing with any excisable goods which one knows or has reason to believe are liable to confiscation

*Specified offences are:-

(a) Contravention of any of the provisions of section 8 (dealing with restriction on possession of certain goods specified in the Second Schedule) or of a rule made under section 37(2)(iii) [relating to power of Central Government to restrict transit of excisable goods to any part of India] or section 37(2)(xxvii) [relating to power of Central Government to specify the persons required to get registered],

OR

(b) Evasion of payment of any duty payable under the Central Excise Act.

(B) Cognizable offences to be non-bailable

Every person arrested under Central Excise Act has to be forwarded, without delay:-

(i) to the **nearest Central Excise Officer** (empowered to send persons so arrested to a Magistrate)

or

(ii) to the **officer-in-charge of the nearest police station** if there is no such Central Excise Officer within a reasonable distance [Section 19].

<u>Erstwhile position</u>

The bail provisions under the old position of law have been outlined below:-

(i) <u>In case where the accused person is forwarded to the officer-in-charge of the nearest police station:</u> Such officer shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail, forward him in custody to such Magistrate [Section 20].

(ii) <u>In case where the accused person is forwarded to the nearest Central Excise Officer:</u> The Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case.

In case there is sufficient evidence or reasonable ground of suspicion against the accused person, CEO shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail, forward him in custody to such Magistrate. Otherwise, he shall release the accused person on his executing a bond, with or without sureties and may direct to appear before Jurisdictional Magistrate [Section 21].

Earlier, all offences under Central Excise were non-cognizable and bailable.

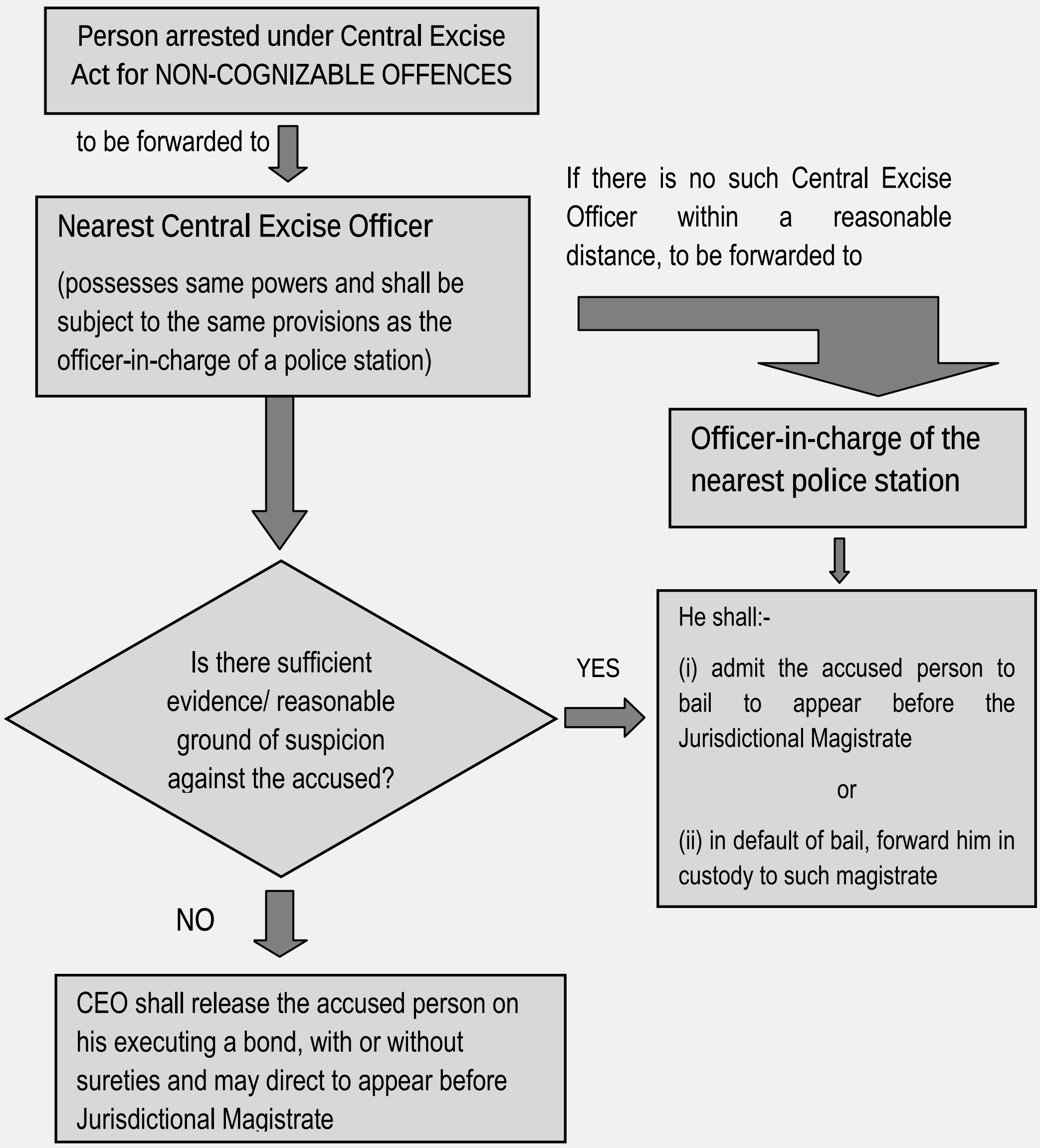
<u>New position</u>

The Finance Act, 2013 has amended section 20 to provide that a person can be admitted to bail by an officer-in-charge of the police station only in respect of an offence which is non-cognizable. Similar amendment has been made under section 21 whereby the provisions relating to release of arrested persons on bail or personal bond by the nearest Central Excise Officer have been made applicable only to non-cognizable offences.

Henceforth, bail can be granted only for non-cognizable offences. Cognizable offences would be non-bailable.

[Effective from 10.05.2013]

NON-COGNIZABLE OFFENCES ONLY TO BE BAILABLE



OFFENCES

Cognizable Offence

A **cognizable offence** is a criminal offence in which the police is empowered to register an FIR, investigate, and arrest an accused without a court issued warrant.

Bailable Offence

A **bailable offence** is a criminal offence in which the accused shall be offered to be released on suitable bail upon his arrest by the police or the court informing about his right to be so released.

Non-cognizable Offence

A **non-cognizable offence** is an offence in which police can neither register an FIR, investigate, nor effect arrest without the express permission or directions from the court.

Non -bailable Offence

A **non-bailable offence** is an offence in which the accused person shall not be automatically entitled to be released on bail. However, it does not mean that the court may not order him to be released on a suitable bail - with or without any conditions.

3. Recovery mechanism strengthened [Section 11]

Section 11 of the Central Excise Act, 1944 deals with recovery mechanism of duty and other sums payable to the Central Government under any of the provisions of the Central Excise Act, 1944 or rules made thereunder including the excess amount collected and required to be paid to the credit of the Central Government under section 11D. The Finance Act, 2013 has strengthened the said recovery mechanism. For this purpose, erstwhile section 11 has been re-numbered as section 11(1) and a new sub-section (2) has been inserted to section 11.

A. Powers of recovery may be extended to a Central Excise Officer/ proper officer authorised section 142 of the Customs Act also [Sub-section (1)]

Earlier, only an officer empowered by CBEC was authorized to recover the excise duty. However, **with effect from** 10.05.2013, the officer empowered by the CBEC may also require the following two categories of officers to recover excise duty:

(i) A Central Excise Officer; or

(ii) A proper officer authorized to recover the sums due from the Government under section 142 of the Customs Act, 1962.

B. Money due to the Government may now be recovered from any person other than from whom money is due after giving proper notice, if that other person holds money for/on account of the first person - Garnishee Proceedings [New sub-section (2) inserted]

Sub-section (2) has been inserted in section 11 which empowers the Central Excise Officer to recover the monies due to the Government from any person other than from whom money is due, if that other person holds money for/on account of the first person. The procedure for the same is as under:-

(i) *Issuance of the notice for recovery to any person other than from whom money is due:* The Central Excise Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before it becomes due or is held.

(ii) *Noticee bound to comply with the notice:* Every person to whom a notice is issued under this sub-section shall be bound to comply with such notice. In case any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(iii) *In case of failure to make the payment, the noticee deemed to be the assessee in default:* In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment, he shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or the rules made thereunder have become due, in respect of the amount specified in the notice. Therefore, all the consequences prescribed for assessees in default would apply for such other person as well.

[Effective from 10.05.2013]

4. **Service of a statement containing details of duty not levied/paid, short levied/paid or erroneously refunded to be deemed to be service of show cause notice [Sub-section (7A) inserted in section 11A]**

New sub-section (7A) to section 11A stipulates as follows:-

Notwithstanding anything contained in sub-section (1)/(3)/(4)/(5), the Central Excise Officer may, serve, subsequent to any notice(s) served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1)/(3)/(4)/(5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice(s).

In simple words, if one show cause notice has been issued, then service of a statement containing details of non/short payment, short/non levy or erroneous refund of duty etc. would be deemed to be a service of show cause notice ***provided*** the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice(s).

Therefore, the limitation period of one year or five years, as the case may be, would be be computed from the date of service of such statement.

[Effective from 10.05.2013]

5. **Central Excise Officer empowered to attach the property belonging to person on whom notice is served under ANY sub-section of section 11A [Section 11DDA(1)]**

Erstwhile position

Section 11DDA(1) provides for the provisional attachment of property by Central Excise officer, for the purpose of protecting the interest of the revenue, during the pendency of any proceedings under section 11A or section 11D.

Earlier, a Central Excise Officer could provisionally attach the property belonging to only such person on whom notice had been served under sub-section (1) of section 11A. Thus, in respect of notices issued under other sub-sections of section 11A namely, sub-section (3), or (4) or (5), provisional attachment of property could not be ordered.

New position

Section 11DDA(1) has been amended by the Finance Act, 2013 so as to enable a Central Excise Officer to attach the property belonging to any person on whom a notice is served under any of the sub-sections of section 11A.

As per section 11A, a notice can be issued under following sub-sections:-

(i) Sub-section (1): In case of non/short levy, non/short payment and erroneous refund of excise duty for any reason, other than the reason of fraud or collusion etc.

(ii) Subsection (3): Where amount paid in pursuance to notice issued under sub-section (1) falls short of amount actually payable.

(iii) Sub-section (4): In case of non/short levy, non/short payment and erroneous refund of excise duty by reason of fraud, or collusion, or any misstatement etc.

(iv) Sub-section (5): Where during the course of audit, investigation or verification, it is found that any duty has not been levied/paid or short levied/paid or erroneously refunded by reason of fraud, collusion, or any misstatement etc., but the details relating to the transactions are available in the specified records.

[Effective from 10.05.2013]

6. Scope of advance ruling widened [Section 23A(a) and section 23C(2)(e)]

The scope of advance ruling has been significantly widened in the following manner:-

(i) Existing producer or manufacturer may seek advance ruling at the time of starting a new line of business

Erstwhile position

Advance ruling means the determination, by the authority of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity proposed to be undertaken, by the applicant [Section 23A(b)]. Earlier, activity was defined to mean production or manufacture of goods [Section 23A(a)].

New position

The definition of activity has been expanded to include any new business of production/manufacture proposed to be undertaken by the existing producer/manufacturer, as the case may be. It implies that any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him.

(ii) Advance ruling can also be sought on the issue of admissibility of credit of service tax paid or deemed to have been paid

Erstwhile position

Earlier, the application for advance ruling was admissible, *inter alia*, on the question of admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to manufacture of the excisable goods [Section 23C(2)(e)].

New position

Section 23C(2)(e) has been amended to extend the advance ruling provisions to the admissibility of the credit of service tax paid or deemed to have been paid on input services used in the manufacture of excisable goods as well.

(iii) In section 23F (relating to advance ruling to be void in certain circumstances), reference to section 28-I which was earlier given erroneously* has been appropriately substituted with section 23D [procedure on receipt of application for advance ruling under excise].

**Section 28-I is the relevant section outlining the procedure on receipt of application for advance ruling under the Customs Act, 1962.*

[Effective from 10.05.2013]

7. Tribunal empowered to grant stay by another 185 days [Third proviso inserted to section 35C(2A)]

Where CESTAT grants a stay in an appeal filed before it, it shall dispose of the appeal (where it is possible to do so) within a period of 180 days from the date of stay order. In case the appeal is not disposed of within 180 days from the date of stay order, the stay order stands vacated [First and second provisos to section 35C(2A)].

The Finance Act, 2013 has inserted third proviso to section 35C(2A) to provide that CESTAT may further extend the period of stay, by not more than 185 days:-

(i) on an application made in this behalf by a party and

(ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party.

In case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365 days, stand vacated.

[Effective from 10.05.2013]

8. Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ₹ 10 lakh to ₹ 50 lakh [Section 35D(3)]

Erstwhile position

Earlier, single bench of CESTAT could hear and dispose of appeals where the duty involved or the difference in duty involved or the amount of fine/penalty involved was upto ₹ 10 lakh.

New position

The Finance Act, 2013 has amended section 35D(3) to enhance this monetary limit to ₹ 50 lakh. Therefore, now, single bench of CESTAT has been empowered to hear and dispose of appeals where the duty involved or the difference in duty involved or the amount of fine or penalty involved is upto ₹ 50 lakh.

[Effective from 10.05.2013]

9. Speed post with proof of delivery or courier approved by the CBEC will also be the authorized modes of delivery of any decision or order or any summons or notices [Section 37C(1)(a)]

Erstwhile position

Hitherto, a decision, order, summon or notice used to be served to the intended person either by tendering the same (physical delivery) or by sending it through registered post with acknowledgment due [Section 37C(1)(a)].

New position

Section 37C(1)(a) has been amended. A decision, order, summons or notice can now be served by any of the following modes of delivery:-

(i) by tendering

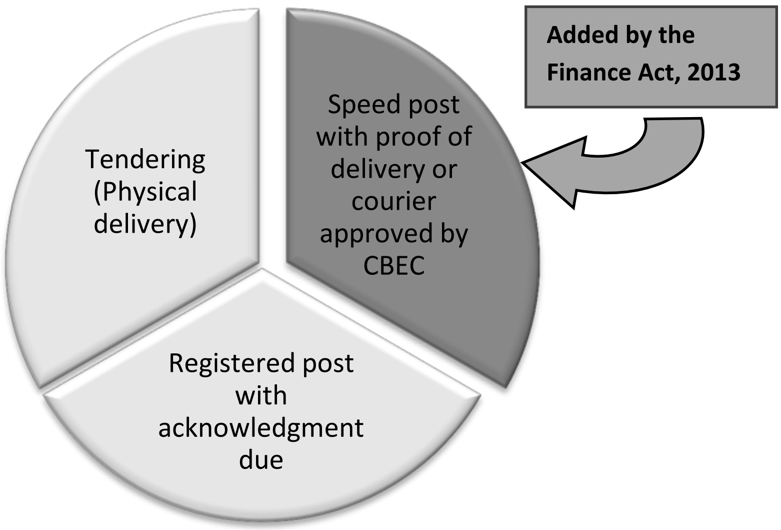
(ii) by registered post with acknowledgment due, or

(iii) by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs

Thus, Finance Act, 2013 has specified additional modes of delivery for decisions, orders, summons or notices namely, speed post with proof of delivery or courier approved by CBEC.

[Effective from 10.05.2013]

Modes of service of decisions/orders/summons/notices under section 37C(1)(a)



B. SERVICE TAX

AMENDMENTS IN CHAPTER V AND VA OF THE FINANCE ACT, 1994

1. Amendments relating to the negative list of services

(a) **Courses run by ITI/ITC affiliated to State Council of Vocational Training not liable to service tax [Section 65B(11)]**

Services by way of education as a part of an "approved vocational education course" are not liable to service tax as they are included in the negative list of services [Clause (l) of section 66D]. The definition of "approved vocational education course" under section 65B(11) has been amended vide the Finance Act, 2013 in the following manner:

(i) Courses in designated trades offered by industrial training institute (ITI)/ industrial training centre (ITC) affiliated to State Council of Vocational Training have been included in the definition. Earlier, only the courses offered by ITI/ITC affiliated to National Council of Vocational Training were covered in the definition.

(ii) A course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India has been removed from the definition.

The above amendments will have the following implications:-

(i) Courses in designated trades offered by ITI/ITC affiliated to State Council of Vocational Training will also be exempt from service tax as they have now been included under the negative list.

(ii) A course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India would no more be exempt from service tax.

A comparative analysis of the taxability of various vocational courses pre and post the Finance Act, 2013 is given hereunder:-

S.No.	Vocational courses	Prior to 10.05.2013	With effect from 10.05.2013
1.	Courses offered by ITI/ITC affiliated to State Council of Vocational Training	Taxable	Exempt
2.	Courses offered by ITI/ITC affiliated to National Council of Vocational Training	Exempt	Exempt
3.	Modular Employable Skill Course	Exempt	Exempt
4.	Courses run by an institute affiliated to the National Skill Development Corporation	Exempt	Taxable

**National Skill Development Corporation (NSDC) is a Public Private Partnership (PPP) in India set up to facilitate the development and upgrading of the skills of the growing Indian workforce through skill training programs. A large part of the organization's efforts are directed at the private sector and towards developing the skills in the unorganized sector in India. The National Skill Development Policy 2009 mandates that NSDC would constitute Sector Skill Councils (SSCs) which would inter alia grant accreditation/affiliation to vocational courses being run by various institutes.*

Example

Comment on the applicability of service tax in case of vocational educational courses (VEC) run by the following institutes during the month of February, 2013 and June, 2013:

(a) 'Udaan' an industrial training institute (ITI) affiliated to the National Council for Vocational Training (NCVT)

(b) 'A-Star' a vocational education provider affiliated to Sector Skill Council formed under National Skill Development Corporation (NSDC)

(c) 'Best Skill Centre' an industrial training centre (ITC) affiliated to the State Council for Vocational Training, Delhi

(d) 'Horizon', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESC) approved by the National Council of Vocational Training.

The courses offered in point (a), (b) and (c) are in designated trades notified under the Apprentices Act, 1961.

Solution:

Sl. No.	Institute/Centre	February, 2013	June, 2013
1.	'Udaan' – ITIs affiliated to NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable	Non-taxable
2.	'A-Star' – With effect from 10.05.2013, institutes affiliated to NSDC have been removed from the definition of approved VEC vide the Finance Act, 2013. Thus, the same are outside the purview of negative list.	Non-taxable	Taxable
3.	'Best Skill Centre' – With effect from 10.05.2013, ITCs affiliated to SCVTs have been included in the definition of approved VEC vide the Finance Act, 2013. Thus, the same are included in the negative list.	Taxable	Non-taxable
4.	'Horizon' – Institutes registered with DGET running MESC approved by NCVT are covered under the definition of approved VEC. Thus, the same are included in the negative list.	Non-taxable	Non-taxable

(b) Manufacture under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 not liable to service tax [Section 65B(40)]

Erstwhile position

The negative list of services includes "any process amounting to manufacture or production of goods" [Clause (f) of section 66D]. The term process amounting to manufacture or production of goods had been defined under section 65B(40) to include-

(i) a process on which excise duty is leviable under section 3 of the Central Excise Act, 1944

or

(ii) any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

Thus, the above two processes, being covered under the negative list of services, were not liable to service tax.

New position

Definition of "any process amounting to manufacture or production of goods" has been expanded by the Finance Act, 2013 so as also to include a process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. Thus, now service tax is not leviable on a process on which excise duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act.

Since, manufacture of the products specified in the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 also attracts excise duty, it should not be exigible to service tax. However, on account of the erstwhile definition of "any process amounting to manufacture or production of goods", the same had been liable to service tax. This anamoly has now been rectified by bringing such manufacture under the negative list of services.

[Effective from 10.05.2013]

Example

State whether following activities undertaken by M & M Manufacturers of Chandigarh would be liable to service tax during April, 2013 and June, 2013:

(i) Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944

(ii) Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914

(iii) Processing of raw materials to make them fit for further production. The process is not liable to any excise duty

(iv) Manufacture of medicines liable to excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955

Solution:

Sl. No.	Activity	April, 2013	June, 2013
(i)	Manufacture of herbal cosmetics liable to excise duty under the Central Excise Act, 1944 – covered in the definition of process amounting to manufacture. Thus, included in the negative list.	Non-taxable	Non-taxable
(ii)	Manufacture of alcoholic drinks liable to excise duty under the Punjab Excise Act, 1914 – covered in the definition of process amounting to manufacture. Thus, included in the negative list.	Non-taxable	Non-taxable
(iii)	Processing of raw materials to make them fit for further production. The process is not liable to any excise duty. This will be a service liable to service tax.	Taxable	Taxable
(iv)	Manufacture of medicines liable to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 – The Finance Act, 2013 has included such manufacture in the definition of process amounting to manufacture. Thus, with effect from 10.05.2013, such a manufacture is included in the negative list.	Taxable	Non-taxable

(c) ALL testing activities including seed testing directly related to production of any agricultural produce not liable to service tax [Section 66D(d)(i)]

Erstwhile position

Earlier, sub-clause (i) of Section 66D(d) [Negative list], inter alia, included only the "seed testing" directly related to production of any agricultural produce. Consequently, other type of testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes etc. became liable to service tax.

New position

The Finance Act, 2013 has expanded the scope of the said negative list entry by deleting the word "seed". As a result, all types of testing activities which are directly related to production of any agricultural produce have been covered under the negative list.

[Effective from 10.05.2013]

Example

'Big Agro Handlers' furnishes the following details with respect to the activities undertaken by them in the month of June, 2013:

Sl. No.	*Particulars*	*Amount (₹)*
(i)	*Supply of farm labour*	*58,000*
(ii)	*Warehousing of biscuits*	*1,65,000*
(iii)	*Sale of rice on commission basis*	*68,000*
(iv)	*Training of farmers on use of new pesticides and fertilizers developed through scientific research*	*10,000*
(v)	*Renting of vacant land to a stud farm*	*1,31,500*
(vi)	*Testing undertaken for soil of a farm land*	*1,21,500*
(vii)	*Leasing of vacant land to a poultry farm*	*83,500*

Compute the service tax liability of 'Big Agro Handlers' for the month of June, 2013. Assume that the point of taxation in respect of all the activities mentioned above falls in the month of June, 2013 itself.

'Big Agro Handlers' has paid service tax of ₹6,18,000 during the Financial Year 2012-13.

Solution:

Computation of service tax payable by Big Agro Handlers for June, 2013

Sl. No.	Particulars	Amount (₹)
(i)	Supply of farm labour [Note 1]	-
(ii)	Warehousing of biscuits [Note 3]	1,65,000
(iii)	Sale of rice on commission basis [Note 1]	-
(iv)	Training of farmers on use of new pesticides and fertilizers developed through scientific research [Note 1]	-
(v)	Renting of vacant land to a stud farm [Note 2]	1,31,500
(vi)	Testing undertaken for soil of a farm land [Note 1]	-
(vii)	Leasing of vacant land to a poultry farm [Note 2]	-
	Total	2,96,500
	Service tax @ 12.36% (rounded off)	36,586

Notes:

(1) Clause (d) of negative list of services [section 66D] covers 'services relating to agriculture or agricultural produce by way of *inter alia* –

   (i) supply of farm labour

   (ii) services provided by a commission agent for sale or purchase of agricultural produce

   (iii) agricultural extension services. Agriculture extension means application of scientific research and knowledge to agricultural practices through farmer education or training.

   (iv) agricultural operations directly related to production of any agricultural produce including testing.

(2) Services relating to agriculture or agricultural produce by way of renting or leasing of vacant land are covered under clause (d) of section 66D. Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. Thus, leasing of vacant land to a poultry farm will be included in the negative list but renting of vacant land to a stud farm will be outside the purview of negative list.

(3) Loading, unloading, packing, storage or warehousing of agricultural produce is covered under clause (d) of Section 66D. However, agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. Thus, warehousing of biscuit will be taxable as biscuit is not an agricultural produce.

(4) As Big Agro Handler has paid service tax of ₹6,18,000 during the FY 2012-13, it is not eligible to small service providers exemption provided under *Notification No. 33/2012 ST dated 20.06.2012* in the FY 2013-14.

2. Reference to erstwhile section 66 to be construed as reference to section 66B [New section 66BA inserted]

Owing to the difficulties being faced in implementation of the negative list approach of taxation of services, in so far as it related to insertion of new charging section-section 66B, an explanation to section 66B was inserted vide *Order No. 2/2012 dated 29.06.2012* to provide that with effect from 01.07.2012, for the purpose of levy and collection of service tax, the references to section 66 shall be construed as references to section 66B.

The Finance Act, 2013 has deleted the said explanation and re-introduced the same in the form of a separate section viz., section 66BA.

By the authority of this section, with effect from July 1st, 2012, references to section 66 (charging section under the positive list approach) in Chapter V of the Finance Act, 1994 or any other Act, will be construed as reference to section 66B (charging section under the negative list approach).

Hence, reference to section 66 appearing in the Finance (No.2) Act, 2004 [in the context of education cess] and the Finance Act, 2007 [in the context of secondary and higher education cess] will also be read as 66B, in accordance with this new section.

[Retrospectively effective from July 1, 2012]

3. **SCN issued by invoking extended period of limitation, if not found sustainable, to be deemed to be a SCN issued for a period of eighteen months [New sub-section (2A) inserted in section 73]**

   Erstwhile position

   Hitherto, if any appellate authority or Tribunal or Court concluded that extended period of limitation could not be invoked because the charges for fraud, suppression, willful misstatement etc. were not established, then the entire demand raised in the show cause notice was quashed even though the same was confirmable on merits. Thus, the Central Excise Officer could not determine the demand even for the normal period of limitation of eighteen months.

   New position

   In order to plug this lacuna, the Finance Act, 2013 has inserted new sub-section (2A) to section 73. It provides that in cases where the Department has raised a demand invoking the extended period of limitation (i.e. 5 years), and the appellate authority or Tribunal or Court concludes that extended period cannot be invoked because the charges for fraud, suppression, willful misstatement etc. are not established, the Central Excise Officer can determine the service tax liability for the normal period of limitation i.e, the last eighteen months and raise the demand accordingly.

   It may be noted that in case of non/short levy or non/short payment of service tax in non-fraud cases, penalty under section 78 does not apply. For such cases, penalty under section 76 is invoked. However, interest is payable under section 75 in both the cases for the period of default.

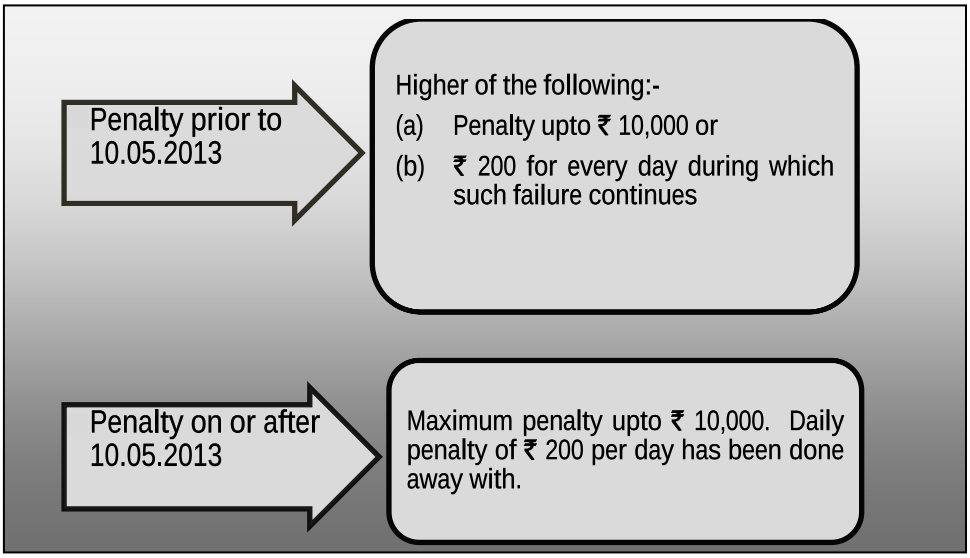
   > Note: *Similar provision already exists in Central Excise Law under section 11A(9) of the Central Excise Act, 1944.*

   [Effective from 10.05.2013]

4. **Maximum penalty for failure to obtain registration restricted to ₹10,000 [Section 77(1)(a)]**

   Penalty for failure to obtain registration in accordance with the provisions of section 69 or the related rules has been relaxed vide the Finance Act, 2013.

   A comparative analysis of the pre and post Finance Act, 2013 situation is as follows:-



Example

A Ltd. starts an advertising agency on April 1, 2013. The details of the bills raised by it during April to June, 2013 are given as under:

Bill No.	*Date*	*Value of taxable services (₹)*
1.	*05.04.2013*	*82,500*
2.	*11.04.2013*	*95,000*
3.	*18.04.2013*	*1,65,000*
4.	*28.04.2013*	*95,000*
5.	*13.05.2013*	*2,75,000*
6.	*15.05.2013*	*1,68,000*
7.	*30.05.2013*	*1,07,000*
8.	*01.06.2013*	*82,500*
9.	*17.06.2013*	*89,500*
10.	*25.06.2013*	*47,600*

A Ltd. applies for registration on 22.08.2013. Is A Ltd. at any default? If yes, what are the penal consequences?

Solution: Since A Ltd. has started its business in the year 2013-14, it would be entitled for small service providers exemption available under *Notification No. 33/2012 ST dated 20.06.2012.* Thus, A Ltd. will be exempt from paying service tax on the taxable services of aggregate value up to ₹10 lakh.

However, section 69 of the Finance Act, 1994 read with the Service Tax (Registration of Special Category of Persons) Rules, 2005 provides that a provider of taxable service whose aggregate value of taxable services in a financial year exceeds ₹9,00,000 has to make an application for registration within a period of 30 days of exceeding the aggregate value of taxable service of ₹9,00,000.

The aggregate value of taxable services of A Ltd. exceeds ₹9,00,000 on 30.05.2013 when it issues Bill No. 7 of ₹1,07,000. Thus, A Ltd. should apply for registration on or before 29.06.2013. However, the application for registration is made on 22.08.2013. Thus, there is delay of total 54 days.

A Ltd. will, therefore, be liable to a penalty which may extend to ₹10,000. Under the old provisions of section 77(1)(a), A Ltd. would have been liable to a penalty of ₹10,800 [₹10,000 or ₹200 x 54 days, whichever is greater].

5. Imposition of personal penalty on director, manager, secretary, or other officer found to be knowingly concerned with specified contraventions [New section 78A]

The new section 78A makes a director, manager, secretary or other officer of the company personally liable to a penalty upto ₹ 1 lakh in case of certain specified contraventions committed by the company. Such penalty would be leviable if the director, manager, secretary or other officer of the company was in charge of, and was responsible to, the company for the conduct of business of such company at the time of commitment of any of the specified contraventions and was knowingly concerned with such contravention.

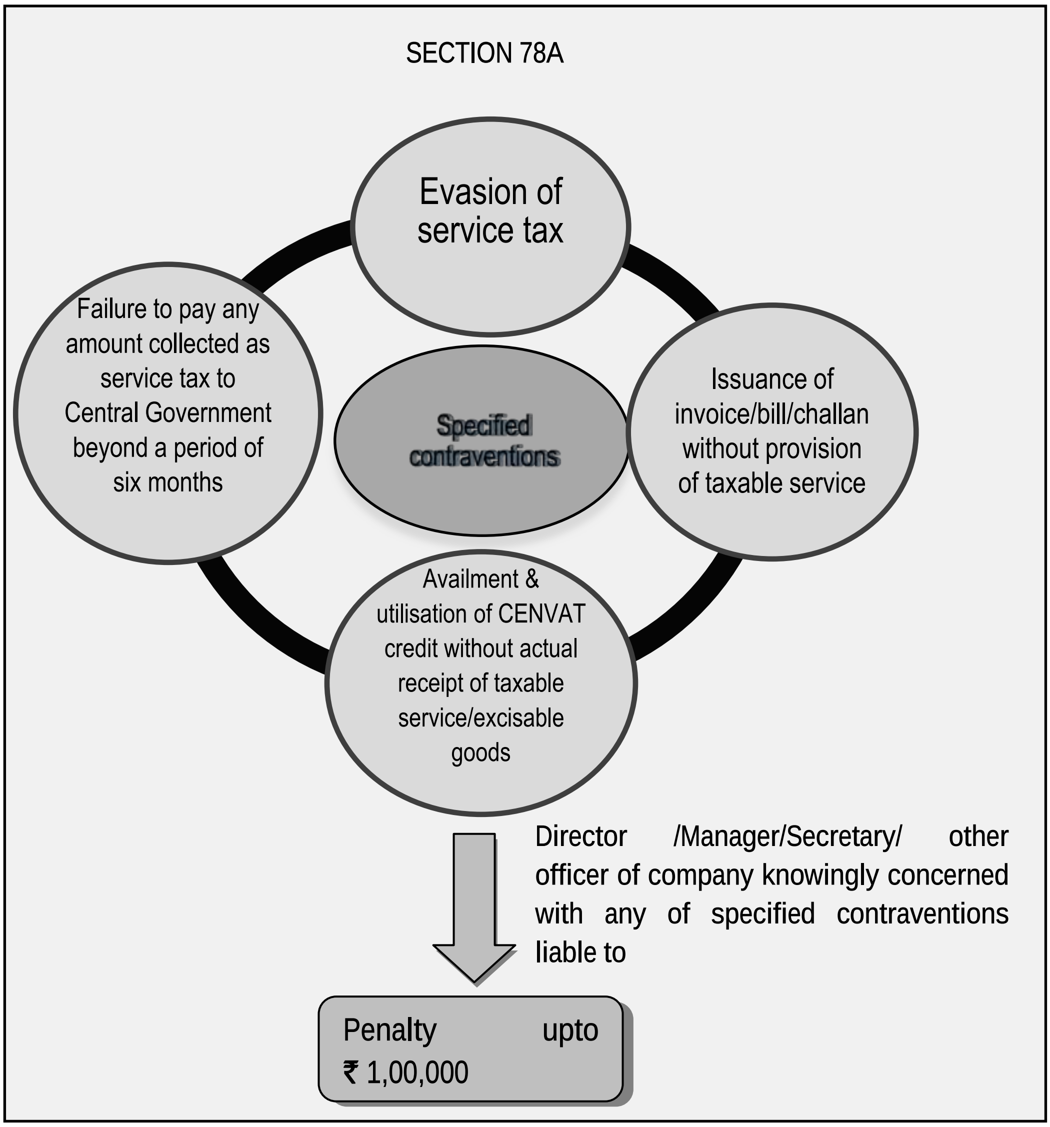
The specified contraventions are:

(a) evasion of service tax; or

(b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of Chapter V; or

(c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V; or

(d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.



6. Tribunal empowered to condone the delay in filing of an appeal by the assessee [Section 86(5)]

Erstwhile position

Hitherto, section 86(5) of the Finance Act, 1994 empowered the Appellate Tribunal to admit an appeal filed by the Commissioner of Central Excise or a Central Excise Officer following the direction of Committee of Chief Commissioners of Central Excise or Committee of Commissioners of Central Excise respectively after the expiry of the statutory period (4 months) for filing the same, if it was satisfied that there was sufficient cause for not presenting it within that period.

Similarly, the Tribunal also had the powers to permit the filing of a memorandum of cross-objections by the Commissioner/ Central Excise Officer/ assessee after the expiry of the statutory period (45 days) for filing the same, if it is satisfied that there was sufficient cause for not presenting it within that period.

Thus, there was no provision enabling the Tribunal to condone the delay in filing of an appeal by the assessee.

New position

The Finance Act, 2013 has amended section 86(5) so as to empower the Appellate Tribunal to also admit an appeal filed by the assessee after the expiry of the statutory period for filing the same, i.e., 4 months if it is satisfied that there was sufficient cause for not presenting it within that period.

[Effective from 10.05.2013]

7. Non-payment of amount collected as service tax beyond six months, when the amount exceeds ₹50 lakh, to be a cognizable offence punishable with an imprisonment extendible to seven years [Section 89 and 90]

The Finance Act, 2013 has made the prosecution provisions [as contained in section 89] more stringent with respect to the offence relating to failure to pay the amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, when such amount exceeds ₹50 lakh. Further, new section 90 has been introduced to make the said offence cognizable. The remaining offences have been categorized as non-cognizable and bailable.

Section 89: The provisions of amended section 89 have been discussed in details below:

(i) The offences described in section 89 can be divided into two categories, namely category 'A' and category 'B'. Category 'A' offences are:

(a) willful evasion of payment of service tax; or

(b) availment and utilization of credit of service tax / excise duty without actual receipt of taxable service / excisable goods either fully or partially in violation of the rules made under the provisions of Chapter V; or

(c) maintenance of false books of account or failure to supply any information which a person is required to supply or knowingly supplying false information.

Category 'B' offence is collection of any amount as service tax but failure to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

(ii) Prosecution provisions relating to Category 'A' offences

(a) If any person commits any of the category 'A' offences, he shall be punishable with imprisonment for a term which may extend from six months to three years if the amount involved in the offence exceeds ₹ 50 lakh.

(b) In case, the amount involved in respect of the category 'A' offence does not exceed ₹ 50 lakh, the imprisonment shall be for a term which may extend to one year.

(c) Any second or subsequent offence from category 'A' offences (whether the amount involved exceeds ₹ 50 lakh or not) would be punishable with imprisonment for a term which may extend to three years.

(iii) Prosecution provisions relating to Category 'B' offence

(a) A person who has committed category 'B' offence will be punishable with imprisonment for a term which may extend from six months to seven years if the amount exceeds ₹50 lakh.

(b) In case, the amount involved in respect of the category 'B' offence does not exceed ₹ 50 lakh, the imprisonment shall be for a term which may extend to one year.

(c) A second or subsequent category 'B' offence (where the amount involved does not exceed ₹ 50 lakh) would be punishable with imprisonment for a term which may extend to three years.

(d) A second or subsequent category 'B' offence (where the amount involved exceeds ₹ 50 lakh) would be punishable with imprisonment for a term which may extend to seven years.

(iv) It may be noted that in case where a person has been convicted of an offence of category 'A' and category 'B' offences for the first time, the term of imprisonment cannot be less than six months if the amount involved in the offence exceeds ₹ 50 lakh. However, the punishment can be reduced if there are special and adequate reasons, which would be recorded in the judgment of the Court, for granting lesser punishment.

[Effective from 10.05.2013]

Section 90: New section 90 relating to cognizance of offences has been discussed in details as below:

(i) Prior to the Finance Act, 2013, section 9A of the Central Excise Act, 1944 was applicable in service tax matters vide section 83 of the Finance Act, 1994.

(ii) Earlier, sub-section 9A(1) of the Central Excise Act, 1944 deemed all offences under section 9 to be non-cognizable. Thus, in service tax also, all the offences were deemed to be non-cognizable.

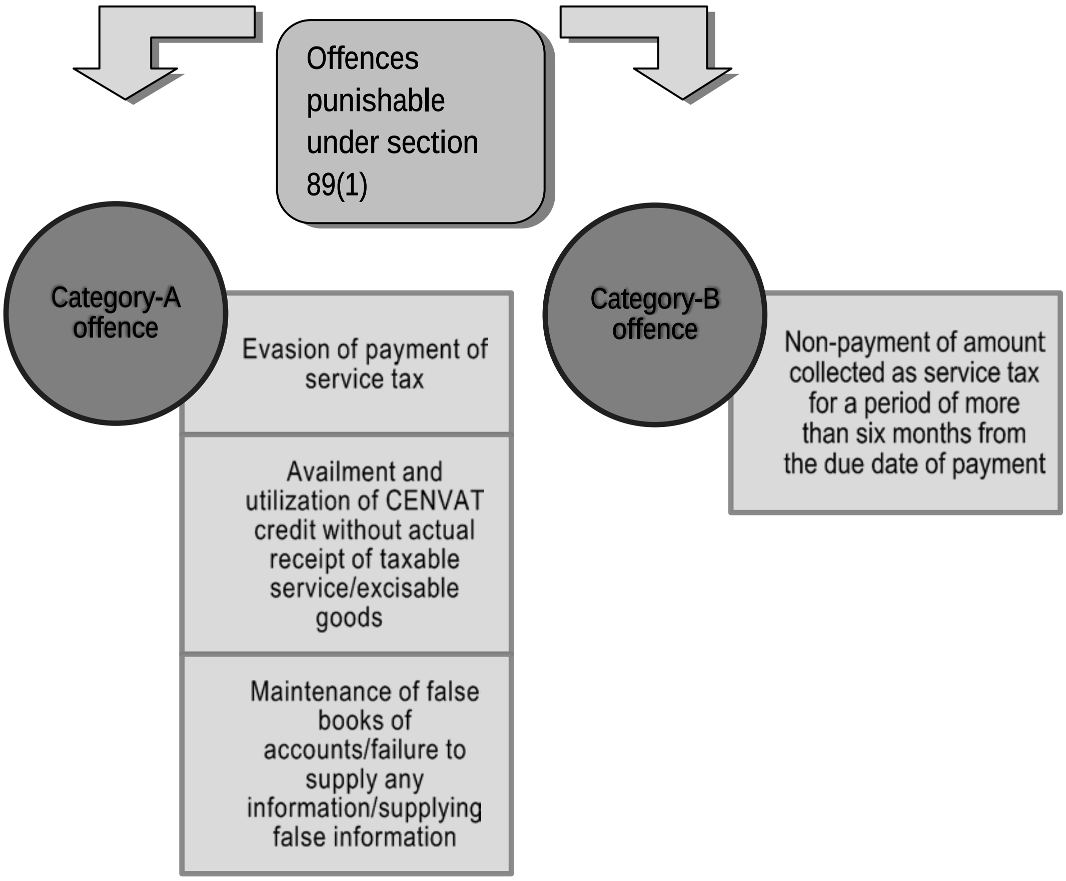
(iii) However, the Finance Act, 2013 has introduced new section 90 which provides that offence involving collection of any amount as service tax but failure to pay the amount so collected to the credit of the Central Government beyond a period of six months would be a cognizable offence if the amount exceeds ₹50 lakh. Therefore, arrest can be made for such an offence without a warrant.

(iv) All the category 'A' offences would be non-cognizable and bailable. Further, non-payment of amount collected as service tax beyond a period of six months, when the amount does not exceed ₹50 lakh, would also be a non-cognizable and bailable offence.

(v) Consequential amendment has, therefore, been made in section 83 so as to apply only sub-section (2) of section 9A of the Central Excise Act, 1944 in service tax matters.

[Effective from 10.05.2013]

The amended provisions of section 89 and new section 90 have been depicted by way of diagrams as follows:



Offence Category	If any person is convicted for an offence for [Section 89]			
A	First time	where the amount is	Term of imprisonment	
			Prior to amendment	After the amendment
		(i) upto ₹ 50 lakh	Upto 1 year	Upto 1 year
		(ii) more than ₹ 50 lakh	6 months* - 3 years	6 months* - 3 years

	Second & every subsequent offence	The term of imprisonment would be 6 months* - 3 years.		The term of imprisonment may extend to 3 years.
B	First time	where the amount is	Term of imprisonment	
			Prior to amendment	After the amendment
		(i) upto ₹ 50 lakh	Upto 1 year	Upto 1 year
		(ii) more than ₹ 50 lakh	6 months* - 3 years	6 months* - 7 years
	Second & every subsequent time	(i) upto ₹ 50 lakh	6 months* - 3 years	Upto 3 years
		(ii) more than ₹ 50 lakh	6 months* - 3 years	Upto 7 years

Such imprisonment shall be for a term of less than six months if there are special and adequate reasons *to be recorded in the judgment of the Court.*

Non-cognizable and bailable offence [Section 90]

Cognizable offence [Section 90]

8. Powers of arrest introduced in service tax [New section 91]

Under Central Excise Law, an Inspector or any other Central Excise Officer above his rank is empowered to arrest any person whom he has reason to believe to be liable to punishment. However, such an arrest needs to be authorized with the prior approval of the Commissioner of Central Excise [Section 13 of the Central Excise Act, 1944].

Similar powers have been introduced in the service tax law this year by the Finance Act, 2013.

(i) Who can arrest? - New section 91 provides that the Commissioner of Central Excise by general or special order authorize any officer of Central Excise, not below the rank of Superintendent of Central Excise to arrest a person.

(ii) Who can be arrested? - A person who has committed any of the offences specified under section 89(1) and the amount involved in the offence exceeds ₹50 lakh.

(iii) When can arrest be ordered? - The Commissioner of Central Excise can order arrest if he has reason to believe that a person has committed the offence mentioned above.

(iv) Manner of arrest - All arrests have to be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrests.

(v) **Procedure in case of cognizable offence –** In case of cognizable offence, every officer authorised to arrest a person has to inform the arrested person of the grounds of arrest and produce him before a magistrate within 24 hours.

(vi) **Procedure in case of non-cognizable and bailable offence –** The Assistant Commissioner /Deputy Commissioner is empowered to release an arrested person on bail or otherwise. For this purpose, the Assistant Commissioner /Deputy Commissioner will have same powers and be subject to the same provisions as an officer in charge of a police station is under Code of Criminal Procedure, 1973.

[Effective from 10.05.2013]

Example

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period June, 2013:

(i) 'A' avails CENVAT credit of ₹52 lakh without actual receipt of excisable goods. However, he is yet to utilize the same.

(ii) 'B' willfully evades payment of service tax of ₹55 lakh.

(iii) 'C' knowingly supplies false information sought by the Central Excise Officer. The amount of service tax involved is ₹ 10 lakh.

(iv) 'D' collects ₹65 lakh as service tax from its clients but deposits only ₹ 5 lakh with the Central Government.

(v) 'E' collects ₹ 55 lakh as service tax from its clients and deposits ₹ 51 lakh with the Central Government.

Solution:

Person	Offence	Prosecution	Arrest	Bail
'A'	No offence as both availment and utilization of credit without actual receipt of excisable goods constitutes an offence [Section 89(1)(b)]	NA	NA	NA
'B'	Non-cognizable offence [Section 90(2)]	6 months to 3 years [Section 89(1)(i)]	Arrest can be ordered by Commissioner of Central Excise [Section 91(1)]	Bailable Offence [Section 90(2)]
'C'	Non-cognizable offence [Section	Upto 1 year [Section	No arrest [Section 91(1)]	Bailable Offence

	90(2)]	89(1)(iii)]		[Section 90(2)]
'D'	Cognizable offence [Section 90(1)]	6 months to 7 years [Section 89(1)(ii)]	Arrest can be ordered by Commissioner of Central Excise without arrest warrant [Section 91(2)]	Non-Bailable/Bailable Offence [Section 90(2)]
'E'	Non-cognizable offence [Section 90(2)]	Upto 1 year [Section 89(1)(iii)]	No arrest [Section 91(1)]	Bailable Offence [Section 90(2)]

Example

In the above Example, what will be the prosecution implications, if B, D and E are convicted for subsequent offences?

Solution:

Person	Prosecution for subsequent offences
'B'	Imprisonment upto 3 years [Section 89(2)(a)]
'D'	Imprisonment upto 7 years [Section 89(2)(b)]
'E'	Imprisonment upto 3 years [Section 89(2)(a)]

9. Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES)

The Finance Act, 2013 has introduced an amnesty scheme for service tax assessees known as 'Service Tax Voluntary Compliance Encouragement Scheme' to encourage the service providers as well as service receivers - liable to pay service tax under reverse charge - who are either stop filers, non-filers or non-registrants or who have not disclosed their true liability in the returns filed by them to pay their tax dues without payment of interest and penalty. The salient features of the scheme are:

(i) Any person who is liable to pay tax for the period 01.10.2007 to 31.12.2012, but has not paid the same till 01.03.2013 would be eligible for claiming the benefit of this scheme. However, the following persons would not be allowed to declare their tax dues under VCES:

(a) a person to whom any notice or order has been issued before 1st March 2013.

(b) a person who has filed the returns disclosing his true liability and not discharged the service tax amount shown in the same.

(c) a person whose tax dues pertain to a issue for which a notice has been served or an order has been passed in the previous period.

(d) a person against whom an inquiry or investigation in respect of non/short levy or non/short- payment of service tax has been initiated by way of search of premises or summons or requiring production of accounts, documents or other evidences and such inquiry/investigation is pending as on 01.03.2013.

(e) a person against whom an audit has been initiated and such audit is pending as on 01.03.2013.

(ii) The defaulter is required to make a truthful declaration of all his pending tax dues (from October 1, 2007 to December 31, 2012) on or before 31.12.2013. However, if the Commissioner has reasons to believe that the declaration made by a declarant under VCES was substantially false, he may serve a show cause notice within one year from the date of declaration.

(iii) At least half of the declared tax dues need to be paid by December 31, 2013. The remaining half can be paid by:

(a) June 30, 2014 without interest; or

(b) by December 31, 2014 with interest @ 18% from July 1, 2014 onwards.

The amount so paid would be non-refundable.

(iv) On compliance with all the prescribed requirements, the declarant will be granted immunity from interest (as specified), penalties and other proceedings. The proceeding under VCES would be final and cannot be reopened by any forum.

(v) If the declared tax dues are not paid either in part or in full, such dues will be recovered along with interest as per the provisions of section 87.

(vi) The tax-payers will need to settle their dues for the period after December 31, 2012 as per the provisions applicable under the present law.

C. CUSTOMS

1. Central Government empowered to prohibit the importation/exportation of goods for protection of "designs and geographical indications" also [Section 11(2)(n)]

Section 11(1) of the Customs Act, 1962 empowers the Central Government to prohibit either absolutely or conditionally the import or export of specified goods, for any of the purposes enumerated in various clauses of sub-section (2).

Clause (n) of section 11(2) provided that importation/exportation of goods may be prohibited for the protection of patents, trademarks and copyrights.

The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of designs and geographical indications also apart from patents, trademarks and copyrights.

[Effective from 10.05.2013]

2. No refund and recovery if the amount of customs duty involved is less than ₹100 [Section 27(1) and 28(1) amended]

(a) Third proviso inserted in section 27(1)

Hitherto, no minimum limit for refund of customs duty had been specified under the Customs Act, 1962.

The Finance Act, 2013 has inserted a third proviso in section 27(1) which provides that where the amount of refund claimed is less than ₹ 100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ₹ 100.

(b) Proviso inserted in section 28(1)

Hitherto, no minimum limit for recovery of customs duty had been specified under the Customs Act, 1962. Thus, recovery proceedings could be initiated even for the default of ₹ 1.

The Finance Act, 2013 has inserted third proviso in section 28(1) which provides that the proper officer will not serve the show cause notice, where the amount involved is less than ₹ 100. In other words, there would be no recovery of the customs duty if the amount of customs duty involved is less than ₹ 100.

[Effective from 10.05.2013]

3. Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]

Erstwhile position

Section 28BA(1) provides for the provisional attachment of property by proper officer, for the purpose of protecting the interest of the revenue, during the pendency of any proceedings under section 28 or section 28AAA or section 28B.

Prior to the amendment made by the Finance Act, 2013, a proper officer could provisionally attach the property belonging to only such person on whom notice had been served under sub-section (1) of section 28.

In other words, proper officer was empowered to provisionally attach the property belonging to a person on whom a show cause notice (SCN) had been served for short-levy/ non-levy/ erroneous refund of customs duty or non-payment/ part-payment/ erroneous refund of any interest payable, *for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts*. Hence, in a case where SCN was issued for short-levy/ non-levy/ erroneous refund of customs duty or non-payment/ part-payment/ erroneous refund of any interest payable, by reason of collusion or any wilful mis-statement or suppression of facts, proper officer could not provisionally attach the property.

New position

Section 28BA(1) has been amended so as to enable a proper officer to attach the property belonging to any person on whom notice is served under sub-section (1) or sub-section (4) of section 28. It implies that proper officer has now been empowered to provisionally attach the property belonging to a person on whom a SCN has been served for short-levy/ non-levy/ erroneous refund of customs duty or non-payment/ part-payment/ erroneous refund of any interest payable, *by reasons of collusion or any wilful mis-statement or suppression of facts*.

[Effective from 10.05.2013]

4. Scope of advance ruling widened by enabling the existing importer/exporter to seek advance ruling at the time of undertaking a new business of import or export [Section 28E(a)]

Erstwhile position

Advance ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant [Section 28E(b)]. Earlier, activity was defined to mean import or export [Section 28E(a)].

New position

The definition of activity has been expanded to include any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be. It implies that any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him.

[Effective from 10.05.2013]

5. CBEC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)]

Erstwhile Position

Hitherto, the person-in-charge of a vessel/aircraft entering India from any place outside India could not cause or permit the vessel or aircraft to call or land for the first time after arrival in India or at any time while it is carrying passengers or cargo brought in that vessel or aircraft at any place other than a customs port or a customs airport, as the case may be [Section 29(1)]

New position

The Finance Act, 2013 has amended section 29(1) to empower CBEC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

[Effective from 10.05.2013]

6. Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)]

Erstwhile Position

Earlier, the person-in-charge was required to deliver the import/export manifest to the proper officer manually.

New position

Section 30(1) and section 41(1) have been amended vide the Finance Act, 2013 to provide for the mandatory electronic filing of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.

[Effective from 10.05.2013]

7. Interest free period for payment of import duty reduced from five days to two days [Section 47(2)]

Erstwhile Position

The import duty assessed on goods entered for the home consumption should be paid within 5 days (excluding holidays) of the determination of such duty amount. In case he fails to do so, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods [Section 47(2)].

New position

The Finance Act, 2013 has amended section 47(2) so as to reduce the interest free period for payment of import duty from 5 days to 2 days.

[Effective from 10.05.2013]

8. Period of storage without warehousing restricted to 30 days [Section 49]

Where any imported goods entered for home consumption cannot be cleared within a reasonable time, the same may, pending clearance, be permitted to be stored in a public warehouse/private warehouse. Such goods shall not be deemed to be warehoused goods for the purpose of the Customs Act and accordingly warehousing provisions shall not apply to such goods. This is also called warehousing without warehousing [Section 49].

Erstwhile Position

Earlier, no time-period had been specified under section 49 for which imported goods could be stored in a warehouse.

New position

Section 49 has been amended to introduce a time limit of $\boxed{\text{30 days}}$ for storage of goods in a warehouse in the interest of accountability and early finalization of assessments.

However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

[Effective from 10.05.2013]

9. Export of warehoused goods without payment of import duty allowed on presenting postal export documents also [Section 69(1)(a)]

As per section 69(1)(a) of the Customs Act, 1962, any warehoused goods might be exported to a place outside India without payment of import duty provided a shipping bill or a bill of export had been presented in respect of such goods in the prescribed form.

This section had been amended to allow export of warehoused goods under postal export documents [as referred to in section 82] also.

Note: In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

[Effective from 10.05.2013]

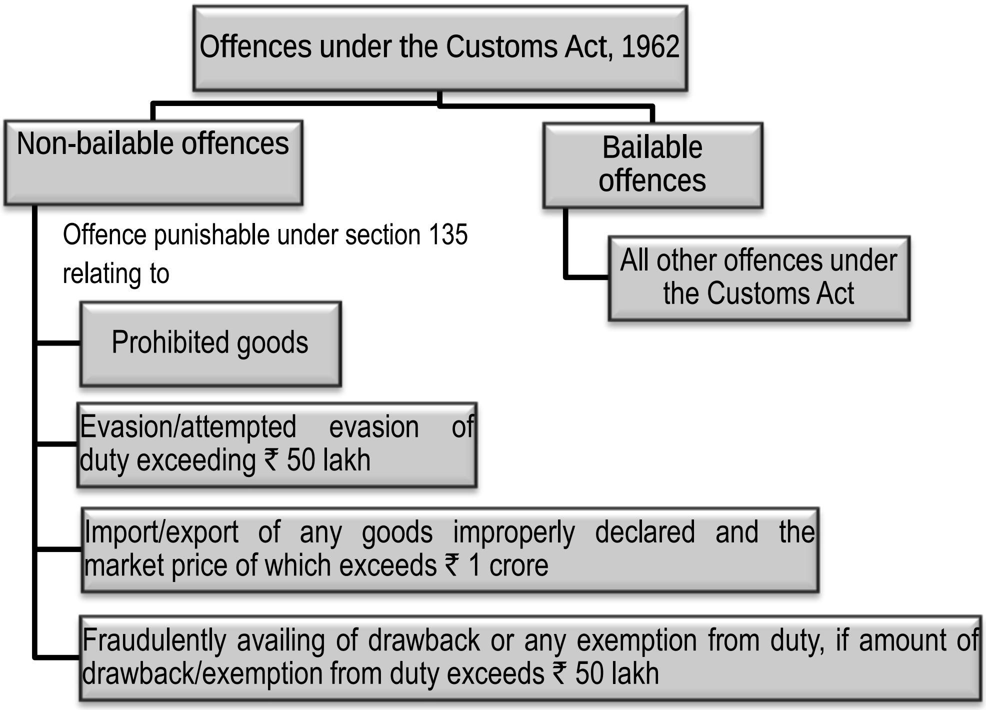
10. Certain specified offences to be non-bailable [Section 104(6)]

Erstwhile position

Earlier, ALL offences under Customs Law were bailable [Section 104(6)].

New position

Finance Act, 2013 has substituted sub-section (6) to section 104 with sub-sections (6) and (7). Now, certain offences have been specified as non-bailable offences. Rest of the offences would be bailable as before.



The provisions of sub-sections (6) and (7) to section 104 have been discussed in detail as follows:-

NON-BAILABLE OFFENCES

An offence punishable under section 135 relating to:-

(a) evasion or attempted evasion of duty exceeding ₹50 lakh; or

(b) prohibited goods [notified under section 11 also notified under section 135(1)(i)(C)]; or

(c) import/export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹1 crore; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹50 lakh,

shall be a non-bailable offence.

BAILABLE OFFENCES

All other offences under the Customs Act, 1962 except those specified above shall be bailable.

[Effective from 10.05.2013]

11. **Tribunal empowered to grant stay by another 185 days [Third proviso inserted to section 129B(2A)]**

Where CESTAT grants a stay in an appeal filed before it, it shall dispose of the appeal (where it is possible to do so) within a period of 180 days from the date of stay order. In case the appeal is not disposed of within 180 days from the date of stay order, the stay order stands vacated.

The Finance Act, 2013 has inserted third proviso to section 129B(2A) to provide that CESTAT may further extend the period of stay, upto a maximum period of 185 days:-

(i) on an application made in this behalf by a party and

(ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party.

In case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365 days, stand vacated.

[Effective from 10.05.2013]

12. **Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ₹ 10 lakh to ₹ 50 lakh [Section 129C(4)]**

Erstwhile position

Earlier, single bench of CESTAT could hear and dispose of appeals where:-

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125;

(ii) in any other disputed case other than case of determination of any question relating to the rate of duty of customs or to the value of goods for the purpose of assessment is in issue or is one of the points in issue the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty involved

was upto ₹10 lakh [Section 129C(4)].

New position

The Finance Act, 2013 has amended section 129C(4) to enhance this monetary limit to ₹ 50 lakh.

[Effective from 10.05.2013]

13. **Offences involving evasion of duty exceeding ₹50 lakh to attract 7 years imprisonment and fine instead of earlier ₹30 lakh [Sub-clause (C) and (D) of section 135(1)(i)]**

Section 135 stipulates the penal provisions applicable to a person who has committed any of the offences specified therein (hereafter referred to as offender).

Erstwhile position

Earlier, such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:-

(i) evasion or attempted evasion of duty exceeding ₹30 lakh or

(ii) fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹30 lakh.

New position

The said monetary limit has been increased from ₹30 lakh to ₹50 lakh. Thus, now the offender would be punishable with an imprisonment upto 7 years and with fine in case the evasion or attempted evasion of duty exceeds ₹50 lakh or in case of fraudulent availment of or attempt to avail the drawback or any exemption from duty for export of goods, the amount of drawback or exemption from duty exceeds ₹50 lakh.

[Effective from 10.05.2013]

14. Money due to the Government may now be recovered from any person other than from whom money is due after giving proper notice, if that other person holds money for/on account of the first person - Garnishee Proceedings [New clause (d) inserted to section 142(1)]

New clause (d) inserted to section 142(1) empowers the Proper Officer to recover the monies due to the Government from any person other than from whom money is due, if that other person holds money for/on account of the first person. The procedure for the same is as under:-

(i) *Issuance of the notice for recovery to any person other than from whom money is due:* The Proper Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before the same becomes due or is held.

(ii) *Noticee bound to comply with the notice:* Every person to whom a notice is issued under this sub-section shall be bound to comply with such notice. In case any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

(iii) *In case of failure to make the payment, the noticee deemed to be the assessee in default:* In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment, he shall be deemed to be a defaulter in respect of the amount specified in the notice. Therefore, all the consequences prescribed for assessee in default would apply for such other person as well.

[Effective from 10.05.2013]

15. Provisions of section 143A omitted

Section 143A providing option for duty deferment for adjustment of duty payable against drawback has been omitted.

[Effective from 10.05.2013]

16. Removal of duty liability on any sample of goods consumed/destroyed during the course of testing/examination [Section 144(3)]

Erstwhile position

Earlier, section 144(3) stipulated that no duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to ₹ 5 or more.

New position

The words "if such duty amounts to ₹ 5 or more" have been omitted from the aforesaid section. Consequently, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

[Effective from 10.05.2013]

17. Change of nomenclature of "customs house agents" to "customs brokers" [Section 146 and section 146A(2)(b)]

Considering the global practice and internationally accepted nomenclature, nomenclature of "customs house agents", wherever used in the Customs Act, 1962, has been replaced with "customs brokers". Consequently, reference to "customs house agents", in section 146 and 146A(2)(b) in the Customs Act, 1962, has been substituted with "customs brokers".

[Effective from 10.05.2013]

18. Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)]

Erstwhile position

Hitherto, any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excises and Salt Act, 1944, or the Gold (Control) Act, 1968 was disqualified from acting as an authorized representative in customs matters.

New position

Clause (b) to section 146A(4) has been substituted with new clause (b) to provide that any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, a person convicted under the Finance Act, 1994 has also been disqualified from acting as an authorized representative in customs matters.

[Effective from 10.05.2013]

19. Expansion of scope of liability of the owner/importer/exporter of any goods [Section 147(3)]

Section 147 stipulates that anything required to be done by the owner/importer/exporter of any goods can be done by his agent. However, the owner/importer/exporter shall be liable for all the acts of his agent.

Further, agent would be deemed to be the owner/importer/exporter of such goods for the purposes of the Customs Act, 1962.

Finance Act, 2013 has amended sub-section (3) of section 147 to enhance the scope of the liability of agents of the owner/importer/exporter of any goods. It now casts equal responsibility on agents for making correct self-assessment.

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS OR CIRCULARS ISSUED BETWEEN 01.07.2012 AND 30.04.2013

A. CENTRAL EXCISE

1. AMENDMENT IN THE CENTRAL EXCISE RULES, 2002

(a) Time period for computing interest on refund arising out of finalization of provisional assessment amended [Rule 7(5)]

In case of provisional assessment, where the assessee is entitled to a refund consequent to an order of final assessment, it is paid along with interest at the rate specified under section 11BB of the Central Excise Act, 1944.

Erstwhile position

Hitherto, the interest on such refund was computed from the first day of the month succeeding the month for which such refund was determined, till the date of refund [Rule 7(5)].

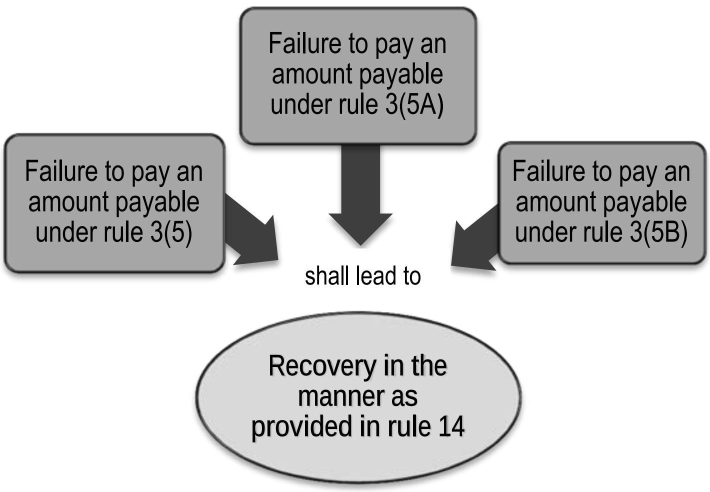
New position

With effect from 01.03.2013, rule 7(5) has been substituted to provide that the interest on refund arising out of finalization of provisional assessment will be computed from the date immediately after the expiry of three months from the date of receipt of refund application till the date of refund of such duty.

[Notification No. 02/2013 (CE) NT dated 01.03.2013]

2. AMENDMENT IN THE CENVAT CREDIT RULES, 2004

(a) Recovery provisions under rule 14 to apply in case of failure to pay the amount on removal of inputs/capital goods as such, removal of capital goods after use and writing off the value of the inputs/capital goods



With effect from 01.03.2013, if the manufacturer of goods or the provider of output service fails to pay the amount payable under following sub-rules of rule 3, it would be recovered, in the manner provided under rule 14, for recovery of CENVAT credit wrongly taken:-

Rule 3(5)-Inputs or capital goods removed as such from the factory/premises of the output service provider

Rule 3(5) requires payment of an amount equal to CENVAT credit availed where inputs or capital goods, on which CENVAT credit has been taken are removed as such from the factory/premises of the output service provider.

Rule 3(5A)- Capital goods removed after being used, whether as capital goods or as scrap or waste

Rule 3(5A) requires payment of specified amount where capital goods on which CENVAT credit has been taken have been removed after being used, whether as capital goods or as scrap or waste.

Rule 3(5B)- Inputs/ capital goods before being put to use written off fully or partially

Rule 3(5B) provides for payment of an amount equivalent to CENVAT credit taken in respect of input or capital goods, if the value of such input, or capital goods before being put to use is written off fully or partially or any provision in this respect has been made.

[Notification No. 03/2013 (CE) NT dated 01.03.2013]

3. Forms for filing appeals in CESTAT under Central Excise, Customs and Service Tax aligned [Rule 7]

Hitherto, Departmental appeal (under section 35B(2) of the Central Excise Act, 1944/section 129A(2) of the Customs Act, 1962) against orders passed by the Commissioner (Appeals) was filed in Form EA-3/CA-3 and Departmental application against order-in original of the Commissioner on the strength of the order of the Committee of Chief Commissioner (under section 35E(1) of the Central Excise Act, 1944/ section 129D(1) of the Customs Act, 1962) was filed in Form EA-5/CA-5.

However, in service tax appeals are filed under section 86(2) and section 86(2A) of the Finance Act, 1994 against orders passed by the Commissioner and Commissioner (Appeals) respectively in a single form ST-7.

Therefore, in order to align the form of filing appeals under excise and customs with that of service tax, both appeals against the order of Commissioner as well as Commissioner (Appeals) are to be filed in Form EA-5/CA-5.

For carrying out the aforesaid amendment, with effect from 01.06.2013, rule 7 of the Central Excise (Appeals) Rules, 2001/Customs (Appeals) Rules, 1982 has been substituted with a new rule 7. New rule 7 of the respective rules provides as follows:-

(1) An appeal under section 35B(2) of the Central Excise Act, 1944/129A(2) of the Customs Act, 1962 and application under section 35E(4)/129D(4) are to be filed in Form EA-5/CA-5.

(2) The appeal or application, as the case may be, in Form No. EA-5/ CA-5 shall be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least shall be a certified copy) passed:-

   a) by the Commissioner (Appeals) and a copy of the order passed by the Committee of Commissioners under section 35B(2)/129A(2) of the Act.

   b) by the Commissioner and a copy of the order passed by the Committee of Chief Commissioners under section 35E(1)/129D(1) of the Act.

Further, new forms for appeals have been prescribed for all appeals filed in the Tribunal [EA-3, EA-4 and EA-5/ CA-3, CA-4 and CA-5/ST-5, ST-6 and ST-7] on or after 1.6.2013 with an objective to ensure quick disposal of cases. Furnishing of PAN by the appellants has been made mendatory. In case where PAN is not available and the appellant is having UID, the same is required to be furnished. Furnishing of IEC (Importer Exporter Code) has been made mandatory in the appeal form for customs.

[Notification No.s 6/2013-CE (N.T.), 37/2013-Customs (N.T.) and 5/2013-ST, all dated 10.04.2013]

4. **Benefit of advance ruling extended to resident public limited companies**

Prior to 01.03.2013, only public sector companies were notified as the class or category of resident persons who can apply for advance ruling in case of specified matters relating to central excise. As per section 2(36A) of the Income-tax Act, 1961, public sector company means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

The scope of advance ruling has been expanded by additionally notifying resident public limited companies as class or category of resident persons who can apply for advance ruling in case of specified matters relating to central excise. Thus, resident public limited companies can also now obtain advance ruling in case of central excise matters.

Meaning of important terms

(i) **Public limited company:** means a company which -

(a) is not a private company ;

(b) has a minimum paid-up capital of ₹ 5 lakh or such higher paid-up capital, as may be prescribed ;

(c) is a private company which is a subsidiary of a company which is not a private company and

shall include a private company that becomes a public company by virtue of section 43A of the Companies Act, 1956.

(ii) **Resident:** shall have the same meaning as is assigned to it in section 2(42) of the Income-tax Act, 1961 in so far as it applies to a company.

[Notification No. 04/2013 (CE) NT dated 01.03.2013]

5. **Recovery procedure against confirmed demand orders – CBEC amends the existing procedures**

CBEC has amended the procedure of initiation of recovery proceedings against a confirmed demand in the following manner:

(a) **Where NO appeal is filed with Commissioner (Appeals)/ CESTAT**

Recovery to be initiated after the expiry of statutory period for filing appeal i.e 60 days / 90 days.

(b) Where an appeal is filed with Commissioner (Appeals)/ CESTAT, WITHOUT a stay application

Recovery to be initiated after filing of such appeal, without waiting for the statutory period of filling an appeal to be exhausted.

(c) Where an appeal is filed WITH a stay application with Commissioner (Appeals)/ CESTAT

Recovery to be initiated *30 days after the filing of appeal*, if no stay is granted, otherwise as per the conditions of the stay order.

Further, apart from above, recovery proceedings will be initiated IMMEDIATELY in the following cases :

- Where Commissioners (Appeals) confirms demand in the order in original
- Where Tribunal or High Court confirms the demand, with no stay in operation.

These guidelines have been issued on the basis of the decision of Hon'ble Supreme Court in the case of Collector of Customs, *Bombay v. Krishna Sales (P) Ltd [1994 (73) E.L.T 519 (S.C)*.

[Circular No. 967/01/2013 CX dated 01.01.2013]

Note: It may be noted that many High Courts, including Andhra Pradesh and Madras High Court, have granted an interim stay against this Circular.

6. Provisions of section 28AAA of the Customs Act, 1962 made applicable to excise duty also

The Central Government has provided that the provisions of section 28AAA of the Customs Act, 1962 shall be applicable in regard to like matters in respect of the duties imposed by section 3 of the Central Excise Act, 1944, subject to the necessary modifications and alterations which the Central Government considers necessary and desirable to adapt those provisions to the circumstances.

[Notification No. 29/2012-CE (NT) dated 10.10.2012]

B. SERVICE TAX

1. Benefit of advance ruling extended to resident public limited companies

Prior to 01.03.2013, only public sector companies were notified as the class or category of resident persons who can apply for advance ruling in case of specified matters relating to service tax. As per section 2(36A) of the Income-tax Act, 1961, public sector company means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

With effect from March 1, 2013, the scope of advance ruling has been expanded by additionally notifying resident public limited companies as class or category of resident persons who can apply for advance ruling in case of specified matters relating to service tax. Thus, resident public limited companies can also now obtain advance ruling in case of service tax matters.

Meaning of important terms

(i) **Public limited company** means a company which -

(a) is not a private company ;

(b) has a minimum paid-up capital of ₹ 5 lakh or such higher paid-up capital, as may be prescribed ;

(c) is a private company which is a subsidiary of a company which is not a private company and

shall include a private company that becomes a public company by virtue of section 43A of the Companies Act, 1956.

(ii) **Resident:** shall have the same meaning as is assigned to it in section 2(42) of the Income-tax Act, 1961 in so far as it applies to a company.

[Notification No. 04/2013 ST dated 01.03.2013]

2. **Lower abatement for commercial construction and high-end construction of residential units**

Earlier, in case of construction services (both residential and commercial units), abatement of 75% of the amount charged by the service provider for providing the said taxable service was allowed subject to the following conditions:

(i) The value of land was included in the amount charged from the service receiver and

(ii) CENVAT credit had not been taken on inputs used for providing such service.

From May 8, 2013

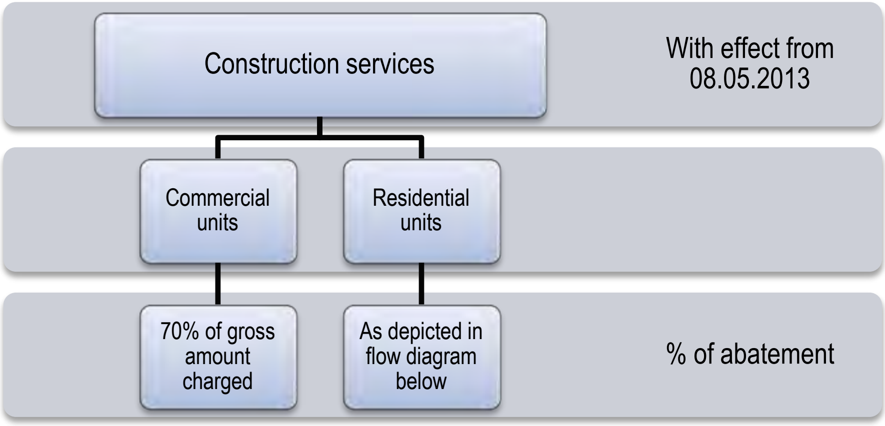
Service tax abatement has been decreased from 75% to 70% in case of commercial construction and high-end residential construction. However, abatement of 75% would be available in case of residential units which fulfil the following **two conditions cumulatively**:

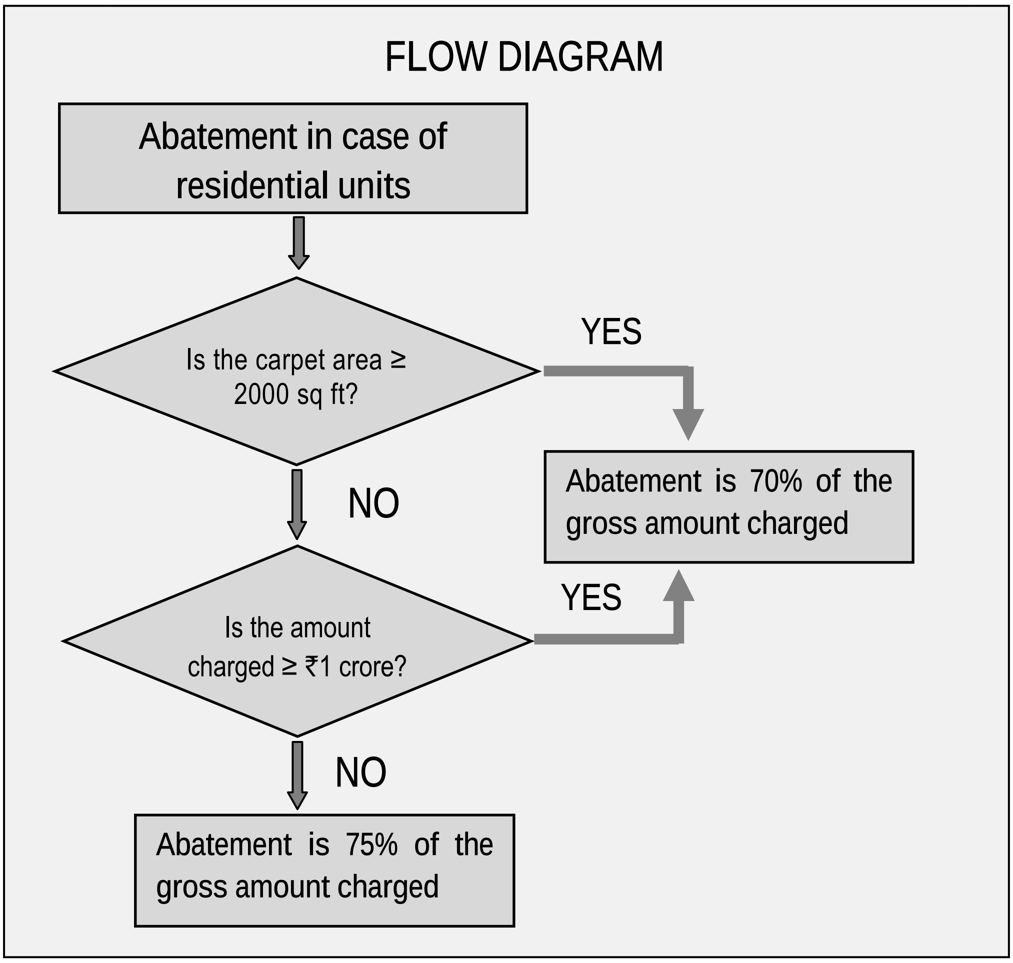
(i) the carpet area of the unit is less than 2000 square feet; and

(ii) the amount charged for the unit is less than ₹1 crore;

Thus, residential units having carpet area of 2000 sq ft or more or where the amount charged is ₹1 crore or more would be considered as high-end construction eligible for lower abatement of 70%.

The situation after the amendment has been depicted below:





Note: The two conditions to be satisfied for claiming the abatement remain the same.

[Notification No. 09/2013 ST dated 08.05.2013]

Example: ABC Constructions Ltd. has provided the following details with respect to individual residential units constructed by it at various cities as part of residential apartments:

Flat Type	Carpet Area (sq. ft.)	Amount Charged (₹)	
A	1980	1,10,00,000	Part of consideration received before issuance of completion certificate by the competent authority
B	2000	1,00,00,000	
C	2500	1,05,00,000	
D	2400	99,50,000	Entire consideration received before issuance of completion certificate by the competent authority
E	2100	1,00,00,000	
F	1600	80,00,000	
G	1940	90,00,000	Entire consideration received after issuance of completion certificate by the competent authority

Following details are also available:

Type of building	Amount charged (₹)	
Multi-level parking for Local Development Authority	3,10,00,000	Part of consideration received before issuance of completion certificate by the competent authority
Office Complex	12,20,00,000	Entire consideration received before issuance of completion certificate by the competent authority
Shopping Mall	30,00,00,000	Entire consideration received after issuance of completion certificate by the competent authority

In all the above construction activities, value of land is included in the amount charged from the service receiver and CENVAT credit on inputs used for construction has not been availed.

You are required to compute the taxable value of the construction service, if any, in each of the case separately on the basis of the service tax law as applicable for the months of -

(i) February, 2013, and

(ii) June, 2013.

Solution: With effect from May 8, 2013, service tax abatement has been decreased from 75% to 70% in case of commercial and high-end residential construction. However, abatement of 75% would be available in case of residential units having carpet area of less than 2000 sq. ft. and where the amount charged is less than ₹ 1 crore.

<table>
<tr><th rowspan="2">Flat Type</th><th rowspan="2">Carpet Area (sq. ft.)</th><th>Amount charged (₹)</th><th>Abatement %</th><th rowspan="2">Taxable Value (25%)</th><th>Amount charged (₹)</th><th>Abatement %</th><th rowspan="2">Taxable Value
Amount charged – Abatement</th></tr>
<tr><th colspan="2">February, 2013</th><th colspan="2">June, 2013</th></tr>
<tr><td>A</td><td>1980</td><td>1,10,00,000</td><td rowspan="6">75</td><td>27,50,000</td><td>1,10,00,000</td><td>70</td><td>33,00,000</td></tr>
<tr><td>B</td><td>2000</td><td>1,00,00,000</td><td>25,00,000</td><td>1,00,00,000</td><td>70</td><td>30,00,000</td></tr>
<tr><td>C</td><td>2500</td><td>1,05,00,000</td><td>26,25,000</td><td>1,05,00,000</td><td>70</td><td>31,50,000</td></tr>
<tr><td>D</td><td>2400</td><td>99,50,000</td><td>24,87,500</td><td>99,50,000</td><td>70</td><td>29,85,000</td></tr>
<tr><td>E</td><td>2100</td><td>1,00,00,000</td><td>25,00,000</td><td>1,00,00,000</td><td>70</td><td>30,00,000</td></tr>
<tr><td>F</td><td>1600</td><td>80,00,000</td><td>20,00,000</td><td>80,00,000</td><td>75</td><td>20,00,000</td></tr>
<tr><td>G</td><td>1940</td><td>90,00,000</td><td>NA</td><td></td><td>90,00,000</td><td>NA</td><td>It is not a case of service but a sale.</td></tr>
</table>

<table>
<tr><th rowspan="2">Type of building</th><th>Amount charged (₹)</th><th>Abatement %</th><th rowspan="2">Taxable Value (25%)</th><th>Amount charged (₹)</th><th>Abatement %</th><th rowspan="2">Taxable Value
Amount charged – Abatement</th></tr>
<tr><th colspan="2">February, 2013</th><th colspan="2">June, 2013</th></tr>
<tr><td>Multi-level parking for Local Development Authority</td><td>3,10,00,000</td><td>75</td><td>77,50,000</td><td>3,10,00,000</td><td>70</td><td>93,00,000</td></tr>
<tr><td>Office Complex</td><td>12,20,00,000</td><td>75</td><td>3,05,00,000</td><td>12,20,00,000</td><td>70</td><td>3,66,00,000</td></tr>
<tr><td>Shopping Mall</td><td>30,00,00,000</td><td>NA</td><td></td><td>30,00,00,000</td><td>NA</td><td>It is not a case of service but a sale.</td></tr>
</table>

3. Mega exemption notification amended

Mega exemption notification, *Notification No. 25/2012 dated 20.06.2012*, has been amended as follows:-

(A) Services by way of slaughtering of ALL animals exempted

Mega exemption notification has been amended to provide the exemption to services by way of slaughtering of ALL animals. Earlier, this exemption was restricted to the slaughtering of bovine animals only.

[Notification No. 44/2012-S.T. dated 07.08.2012]

(B) Life insurance services provided under Janashree Bima Yojana and Aam Aadmi Bima Yojana exempt

Mega exemption notification has been amended to provide the exemption to services of life insurance business provided under following schemes -

(a) Janashree Bima Yojana (JBY); or

(b) Aam Aadmi Bima Yojana (AABY)

[Notification No. 49/2012-S.T. dated 24.12.2012]

(C) Mega exemption notification amended vide *Notification No. 03/2013-ST dated 01.03.2013.* Few exemptions have been withdrawn and few others have been rationalized. All these amendments will be effective from April 1, 2013.

I. Withdrawal of exemptions:

(i) Exemption to auxiliary educational services and renting of immovable property service provided BY an educational institution withdrawn

Earlier, auxiliary educational services and renting of immovable property services provided TO or BY an educational institution in respect of education exempted from service tax were exempted from service tax.

However, exemption to auxiliary educational services and renting of immovable property provided BY an educational institution has now been withdrawn. Thus, w.e.f. 01.04.2013, only the auxiliary educational services and renting of immovable property provided TO an educational institution in respect of education exempted from service tax would be exempt from service tax.

(ii) ALL restaurants with air-conditioning or central air heating liable to service tax

Earlier, serving of food or beverages by only those restaurants, eating joints or mess were liable to service tax which had:

(i) the license to serve alcohol, and

(ii) the facility of air-conditioning/ central air-heating in any part of the establishment, at any time during the year.

Thus, the restaurants, eating joint or mess which fulfilled any one of the two requirements or did not fulfill both the two requirements were exempt from service tax.

Requirement (i) has now been done away with. Hence, only non air-conditioned/non-centrally air-heated restaurants are eligible for exemption. Rest all are liable to service tax.

Example

Atithi Restaurant is a restaurant located at a prominent location in the city. It is centrally air-conditioned, but does not have the license to serve liquor. Determine whether it is liable to pay service tax in the month of March and April, 2013.

Solution: Atithi Restaurant is eligible for the exemption under mega exemption notification till 31.03.2013 as it does not have the licence to serve alcohol. However, with effect from 01.04.2013, all air conditioned restaurants, irrespective of whether they have the license to serve alcohol or not, have been made liable to service tax. Thus, Atithi Restaurant is liable to pay service tax with effect from 01.04.2013.

(iii) Exemption to parking of vehicles withdrawn

Earlier, services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility were exempt.

With effect from April 1, 2013, the said exemption has been withdrawn thereby making services by way of vehicle parking to general public (unreserved parking) liable to service tax. Leasing of space to an entity for providing such parking facility (reserved parking) which was liable to service tax even prior to 01.04.2013 will continue to be liable to service tax.

(iv) Exemption to repair or maintenance of Government aircrafts withdrawn

Services provided to Government, a local authority or a governmental authority by way of repair or maintenance of a vessel or an aircraft were exempt from service tax.

With effect from 01.04.2013, exemption in respect of services provided to the Government by way of repair or maintenance of an **aircraft** has been withdrawn. Thus, now exemption has been restricted to repair and maintenance of Government vessels only.

(v) Exemption upto ₹25 lakh available to entity registered under section 12AA of the Income tax Act, 1961 providing services for advancement of "any other object of general public utility" withdrawn

The exemption available to entity registered under section 12AA of the Income tax Act, 1961 providing services for advancement of "any other object of general public utility" up to ₹ 25 lakh has been withdrawn. The said amendment has been given effect to by modifying the definition of "**charitable activities**". The threshold exemption as available to all other taxable services will continue to be available up to ₹ 10 lakh.

(vi) Exhibition of films in a place other than a cinema hall or a theatre liable to service tax

Till March 31, 2013, temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films was exempt from service tax. However, the benefit of exemption in relation to copyrights for cinematograph films will now be available only to films exhibited in a cinema hall or theatre.

Therefore, exhibition of cinematograph films in a place other than cinema hall or theatre, will be taxable. This will allow service providers to pass on input tax credit to taxable end-user.

II. Rationalization of exemptions

1. Exemption granted to the services of transportation of goods by road/rail/vessel harmonized

Prior to April 1, 2013

Earlier, transport of certain goods through rail or a vessel was exempt from service tax but the transport of same goods in a goods carriage through road was liable to service tax. Thus, there was a disparity with respect to levy of service tax on transport of same goods in different modes of transportation viz. rail/vessel and goods carriage.

The exemptions granted to transport of goods through rail or a vessel and a goods carriage have been presented in the following table:

Transportation of the following goods by rail/vessel was exempt	Transportation of the following goods by a goods transport agency was exempt
(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the Central Excise Tariff Act, 1985;	(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;	(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed ₹1500; or
(c) defence or military equipments;	(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed ₹750.

(d) postal mail or mail bags;	
(e) household effects;	
(f) newspaper or magazines registered with the Registrar of Newspapers;	
(g) railway equipments or materials;	
(h) agricultural produce;	
(i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;	
(j) chemical fertilizer and oil cakes.	

New position

With effect from 01.04.2013, exemptions available to transportation of goods by road/rail/vessel have been harmonized to a large extent in the following manner:

<table>
<tr><th>Transportation of the following goods by rail/vessel have been exempted from service tax</th><th>Transportation of the following goods by a goods transport agency have been exempted from service tax</th></tr>
<tr><td rowspan="2">Railway equipments or materials</td><td>(i) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed ₹1500; or</td></tr>
<tr><td>(ii) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed ₹750.</td></tr>
<tr><td colspan="2">Common exemptions</td></tr>
<tr><td colspan="2">(a) agricultural produce
(b) foodstuff** including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages
(c) chemical fertilizer and oilcakes
(d) newspaper or magazines registered with the Registrar of Newspapers
(e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
(f) defence or military equipments</td></tr>
</table>

Thus, with effect from 01.04.2013, exemption to transportation of petroleum and petroleum products, postal mails or mail bags and household effects by railways and vessels has been withdrawn. Moreover, the scope of exemption to transport of goods by goods transport agency has been widened. As against the earlier exemption available to transport of fruits, vegetables, eggs, milk, food grains or pulses by GTA in a goods carriage, now transportation of all agricultural produce and food stuff has been exempted.

***Note: CBEC has clarified that the expression foodstuff here includes milk also [Circular No.167/2/2013 – ST dated 01.01.2013]*

Example

Answer with respect to applicability of service tax in the following cases during the month of June, 2013:

(i) Transport facility provided by a School to its students through a fleet of buses and cabs owned by the School.

(ii) Transport facility provided by a School to its students through a private Bus/Cab Operator.

(iii) Service provided by a private transport operator to a School in relation to transportation of students to and from a School.

(iv) Services provided by way of vehicle parking to general public in a shopping mall.

(v) Service provided in relation to repair or maintenance of aircraft owned by a State Government.

(vi) Services of a NGO registered under section 12AA of the Income tax Act, 1961 working for the rehabilitation of disabled. The aggregate value of taxable services of the NGO is ₹ 20 lakh.

(vii) Exhibiting movies on television channels.

(viii) Transport of foodstuff, agricultural produce, chemical fertilizers and newspaper registered with the Registrar of Newspapers by a goods transport agency in a goods carriage.

(ix) Transportation of petroleum and petroleum products and household effects by railways.

(x) Transportation of postal mails or mail bags by a vessel.

Solution:

(i) Taxable. Transport facility provided by a School to its students is an auxiliary educational service. With effect from 01.04.2013, the exemption provided to the auxiliary educational services provided by an educational institution has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(ii) Taxable. With effect from 01.04.2013, the exemption provided to the auxiliary educational services provided by an educational institution has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(iii) Exempt. Auxiliary educational services provided to an educational institution are exempt vide *Notification No. 25/2012 ST dated 20.06.2012.*

(iv) Taxable. With effect from 01.04.2013, the exemption provided to the services provided by way of vehicle parking to general public has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(v) Taxable. With effect from 01.04.2013, the exemption provided in relation to repair or maintenance of aircraft owned by Government (Government includes State Government) has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(vi) Taxable. With effect from 01.04.2013, the exemption available to entities registered under section 12AA of the Income tax Act, 1961 providing services for advancement of "any other object of general public utility" up to ₹ 25 lakh has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(vii) Taxable. With effect from 01.04.2013, the benefit of exemption in relation to copyrights for cinematograph films has been restricted only to films exhibited in a cinema hall or theatre. Therefore, exhibition of cinematograph films in a place other than cinema hall or theatre, will be taxable [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(viii) Exempt. With effect from 01.04.2013, services provided by a goods transport agency by way of transportation of foodstuff, agricultural produce, chemical fertilizers and newspaper registered with the Registrar of Newspapers have been exempted vide *Notification No. 25/2012 ST dated 20.06.2012*.

(ix) Taxable. With effect from 01.04.2013, exemption granted to transportation of petroleum and petroleum products and household effects by railways has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

(x) Taxable. With effect from 01.04.2013, exemption granted to transportation of postal mails or mail bags by a vessel has been withdrawn [Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* amended].

4. Transportation of passengers and goods by Indian Rail service exempted till 30-9-2012

Following services provided by the Indian Railways are taxable as they have been specifically excluded from the negative list. However, they have been exempted from service tax between 02.07.2012 and 30.09.2012 (both inclusive):-

(a) Service of transportation of passengers, with or without accompanied belongings, by railways in-

(A) first class; or

(B) an air conditioned coach

(b) Services by way of transportation of goods by railways.

Consequently, with effect from October 1, 2012, the above services have again become liable to service tax @ 12.36% with an abatement of 70% been granted to such services. Therefore, the effective rate of service tax for such services would be 3.7%.

[Notification No. 43/2012-S.T. dated 02.07.2012]

5. Exemption to specified export promotion schemes-Focus Market Scheme, Focus Product Scheme and Vishesh Krishi and Gram Udyog Yojana

The taxable services provided or agreed to be provided against the following duty credit scrips by a person located in the taxable territory are exempt from service tax:-

(i) Focus Market Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance the Foreign Trade Policy.

(ii) Focus Product Scheme duty credit scrip issued to an exporter by the Regional Authority in accordance with the Foreign Trade Policy.

(iii) Vishesh Krishi and Gram Udyog Yojana (Special Agriculture and Village Industry Scheme) duty credit scrip issued to an exporter by the Regional Authority in accordance with the Foreign Trade Policy.

[Notification No.s 6/2013 to 8/2013-ST dated 18.04.2013]

6. Directors fee & security charges brought under Reverse Charge Mechanism

(i) Reverse charge notification amended

Notification No. 30/2012 dated 20.06.2012 has been amended to bring the directors fee & security charges under Reverse Charge System in the following manner:-

S.No.	Description of a service	Percentage payable by the service provider	Percentage payable by the service receiver
1	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%

2	in respect of services provided or agreed to be provided by way of security services for any purpose by any individual/HUF/partnership firm (whether registered or not) including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory	25%	75 %

(ii) Service Tax Rules, 1994 amended

Definition of **person liable to pay service tax** provided under rule 2(1)(d) of the Service Tax Rules, 1994 has also been accordingly amended as follows:-

(i) Person liable for paying service tax in relation to service provided or agreed to be provided by a director of a company to the said company is the recipient of such service **[Item (EE) inserted to rule 2(1)(d)(i)]**.

(ii) Person liable for paying service tax in relation to services provided or agreed to be provided by way of security services by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate, located in the taxable territory are both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively **[Item (F) to rule 2(1)(d)(i) amended]**.

> **Security services** means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity **[Rule 2(fa) of the Service Tax Rules, 1994]**.

[Notification No. 45 & 46/2012-S.T. dated 07.08.2012]

Clarifications

1. No service tax on remittances from abroad

CBEC has clarified that service tax is not leviable on the amount of foreign currency remitted to India from overseas as definition of 'service' under section 65B(44) specifically excludes transactions in money.

Further, service tax would also not be leviable on the fee or conversion fee chargeable for sending such money as the company conducting the remittances and the person sending the money are located outside India. Such services are deemed to be provided outside India in terms of the Place of Provision of Services Rules, 2012.

It has also been clarified that Indian counterpart or financial institutions or entity who charges the foreign bank or any other entity for the services provided at the receiving end will also not be liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e., outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012.

[Circular No.163/14/2012 ST dated 10.07.2012]

2. **Determination of POT for works contracts in progression on July 1, 2012 – CBEC clarifies**

CBEC has clarified the following issues relating to point of taxation arising out of the amendments made vide the Budget 2012 and subsequent amendments made effective from July 1, 2012:

(a) Point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01.04.2012;

(b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and

(c) Applicability of partial reverse charge provisions in respect of specified services.

Till 31.03.2012, rule 6 of the Point of Taxation Rules, 2011 (POTR) determined point of taxation (POT) in case of continuous supply of services. Since, the rule started with a non-obstantate clause, "notwithstanding anything contained in rules 3, 4 …", the POT for continuous supply of services provided on or before 31.03.2012 would not be affected by rule 4 of POTR. In other words, if the invoice had been issued or payment received for such services on or before 31.03.2012, the POT would be determined under rule 6, not being affected by the amendments made effective only from 1.4.2012.

However, with effect from 01.04.2012, rule 6 has been omitted and the POT for continuous supply of services is also being determined ordinarily under the main rule i.e., rule 3 subject to provisions of rule 4. Rule 4 determines the POT when there is a *"change in effective rate of tax"*. C*hange in effective rate of tax* includes a change in the portion of value on which tax is payable. The following examples have been given by the Board to illustrate as to what would constitute changes in effective rate of tax:-

(i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).

(ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.

(iii) taxability of certain works contracts which were hitherto exempted.

(iv) change in the manner of payment of tax for works contracts from composition scheme to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

However, the following will not constitute the change in effective rate of tax:-

(i) works contracts paying service tax at the composite rate of 4.8% earlier and now required to pay service tax @12% on 40% of the total amount charged as the effective rate remains the same at 4.8%.

(ii) non – taxable works contracts (and not merely exempted) which have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. Rule 5 of the POTR will apply in such cases.

It has been further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

[Circular No. 162/13/2012 ST dated 06.07.2012]

3. No service tax on vocational education course if offered by the Central/ State Government/Local Authority

CBEC has clarified that service tax is not leviable on vocational education/training/ skill development courses (VEC) offered by the institution of the Government (Central Government or State Government) or a local authority as in terms of section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

However, if the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment would be determined by either sub-clause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994.

Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

[Circular No.164/15/2012 ST dated 28.08.2012]

4. Accounting codes for payment of service tax under negative list approach of taxation of services

Earlier, under the positive list approach of taxation of services, Department had issued Accounting codes [eight digit numerical codes] in respect of each taxable service to be used by the assessee while paying service tax through GAR-7 challan. Thus, 119 service specific accounting codes were there.

With the introduction of negative list approach of taxation of services, with effect from 01.07.2012, at first service specific old accounting codes were done away with and one Accounting code was prescribed for the purpose of payment of service tax i.e. "All Taxable Services" – 00441089. However, subsequently, for the purpose of statistical analysis, service specific old accounting codes were again restored along with 120th description as "other taxable services".

Consequently, CBEC has accordingly amended Form ST-1 (Registration Form under Service Tax). The amended form has an annexure containing description of taxable services and accounting codes for payment of service tax. The assessee can choose the description as applicable to him from the annexure.

[Circular No. 165/16/2012 –ST dated 20.11.2012, Circular No. 161/12/2012 –ST dated 06.07.2012 & Notification No. 48/2012 ST dated 30.11.2012]

5. No service tax liability at the time of issue of reminder letters by life insurance companies to policy holders to pay renewal premiums

Issue	Clarification
In terms of practice followed, life insurance companies issue reminder notices/letters to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Whether service tax needs to be paid on the basis of such reminders?	Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules, 1994. No tax point arises on account of such reminders. Thus, it is clarified that reminder letters / notices for insurance policies not being invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined.

[Circular No.166/1/2013 – ST dated 01.01.2013]

6. Service tax leviable on the activity by way of erection of pandal or shamiana

Issue: Whether service tax is leviable on the activity of preparation of place for organizing event or function by way of erection/laying of pandal and shamiana or is it a transaction involving "transfer of right to use goods" and hence deemed sale?

Clarification: The activity of providing pandal and shamiana along with erection thereof is generally coupled with other incidental activities like supply of crockery, furniture, sound system, lighting arrangements, etc. It is a reasonably specialized job and is carried out by the supplier with the help of his own labour.

For a transaction to be regarded as "transfer of right to use goods", the transfer has to be coupled with effective control and possession *[Rashtriya Ispat Nigam Ltd.]*. Moreover, if pandal is given to the customers for use only after having been erected, then it is not transfer of right to use goods *[Harbans Lal vs. State of Haryana]*.

Applying the ratio of these judgments and the test formulated by SC in case of *BSNL v. UOI 2006 (2) S.T.R. 161 (S.C.)*[discussed below], CBEC clarified that pandal/shamiana erection activities do not amount to transfer of right to use goods because effective possession and control over the pandal or shamiana remains with the service provider, even after the erection is complete and the specially made–up space for temporary use handed over to the customer. Hence, the activity by way of erection of pandal or shamiana is a declared service, under section 66E(f).

[Circular No. 168/3/2013-ST dated 15.04.2013]

In order to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:- a. There must be goods available for delivery; b. There must be a consensus ad idem as to the identity of the goods; c. The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee; d. For the period during which the transferee has such legal right, it has to be the exclusion of the transferor: this is the necessary concomitant or the plain language of the statute, viz., a "transfer of the right to use" and not merely a license to use the goods: e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others *[BSNL v. UOI 2006 (2) S.T.R. 161 (S.C.)]*

C. CUSTOMS

1. Classes of importers liable to pay customs duty electronically notified

First proviso to section 47(2) of the Customs Act, 1962 empowers the Central Government to specify the class or classes of importers who shall pay customs duty electronically. In exercise of such powers, the Central Government hereby specify following classes of importers who shall pay customs duty electronically, namely:-

(i) Importers registered under Accredited Clients Programme.

(ii) Importers paying customs duty of ₹ 1 lakh or more per bill of entry.

[Notification No. 83/2012-Cus (N.T.) dated 17.09.2012]

2. Baggage provisions relating to the crew members engaged in the foreign going vessel/aircraft amended [Proviso to Rule 10(1) and rule 10(2) of the Baggage Rules, 1998]

Erstwhile position

A crew member of a vessel/aircraft is allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use while returning from a foreign journey upto a value of ₹ 600.

New position

With effect from 01.03.2013, the said limit has been increased to ₹ 1,500.

[Notification No. 25/2013-Cus (N.T.) dated 01.03.2013]

3. Jewellery allowance increased five times for an Indian passenger who had stayed abroad for more than one year

An Indian non-tourist passenger who had stayed abroad for more than one year is allowed an additional jewellery allowance. This allowance has been increased five times.

S.No.	In case of	Jewellery Allowance	
		Till 28.02.2013	With effect from 01.03.2013
1.	Gentleman Passenger	upto ₹ 10,000/-	upto ₹ 50,000/-
2.	Lady Passenger	upto ₹ 20,000/-	upto ₹ 1,00,000/-

[Notification No. 25/2013-Cus (N.T.) dated 01.03.2013]

4. Jewellery allowance increased five times in case of transfer of residence

A passenger, who has been staying abroad for a minimum period of two years and transferring his residence to India, is given a duty free allowance of jewellery as follows:

S.No.	In case of	Jewellery Allowance	
		Till 28.02.2013	With effect from 01.03.2013
1.	Gentleman Passenger	₹ 10,000/-	₹ 50,000/-
2.	Lady Passenger	₹ 20,000/-	₹ 1,00,000/-

Note: *The jewellery taken out of India can be brought back without any limit provided necessary export certificate was taken at the time of going out of India. Further, jewellery which is normally worn is treated as "personal effects" and is exempt from duty even if export certificate is not issued.*

[Notification No. 25/2013-Cus (N.T.) dated 01.03.2013]