Students appearing in DEC 2016 Examination shall note the following

1. In Direct Taxes Finance Act, 2015 is applicable.

2. Applicable Assessment year is 2016-17 (Previous Year 2015-16).

3. Since, Wealth Tax Act, 1957 has been abolished w.e.f. 1st April, 2016. The questions from the same will not be asked in examination from December 2015 session onwards.

4. For Indirect Taxes, all changes made by the Finance Act, 2016 are also applicable for December, 2016 examination.

5. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBEC & Central Government, on or before six months prior to the date of the examination.
6. DOWNLOAD THE LATEST Study Material of Advanced Tax Laws and Practice (based on Finance Act, 2015) - Relevant for DEC2016 Exam – CS FINAL: https://www.icsi.edu/Docs/Website/PP-ATLP-2015-FULL%20BOOK.pdf

7. CS Students may refer the Revision test paper by ICAI of Indirect Tax for better preparation of the subject: http://resource.cdn.icai.org/42758bos32612p8.pdf

7. A GUIDE ON: How to Deal with CS Final Advanced TAX laws: http://www.caclubindia.com/articles/how-to-deal-with-cs-final-advance-tax-laws-a-pass-out-s-guide-25336.asp

AMENDMENTS TO INDIRECT TAX – CS PROFESSIONAL – DEC - 16

FOR MORE UPDATES JOIN THE DEC 16 WHATSAPP GROUP PROFESSIONAL EXPRESS – 9804179372 – CS RAHUL HARSH

CENTRAL EXCISE

Rate of Basic excise duty for DEC 16 EXAM : 12.5% w.e.f. 1.3.2015.

b) EC & SHEC not applicable -w.e.f. 01.03.2015 All goods falling under the First Schedule to CETA, 1985 shall be exempt from the levy of Education Cess and Secondary & Higher Education Cess.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

CS Rahul Harsh

(2) <u>Section 3A</u>:The word 'factor' used in section 3A also includes 'factors'. Hence, the Central Governmentcan specify more than one factor relevant to the production of goods notified u/s. 3A. [w.e.f. 1.3.2015, by the FinanceAct, 2015]

CENVAT CREDIT RULES, 2004

Rule 5B: Following services are notified for claiming refund of CENVAT credit: [Notification No. 15/2015]	Service portion of works contract service (2) Renting or Hiring of passenger motor vehicle (where no abatement is claimed) (3) ~~Manpower supply service or Security Service~~ (since w.e.f. 1.4.2015, covered under full reverse charge, therefore provisions of rule 5B shall not be applicable)
Rule 6(3): option 1	(a) Pay an amount equal of 6% of value of exempted goods and ~~6%~~**7% of value of exempted** services. But in case of transportation of goods or passengers by rail service pay 2% of value of exempted goods and services. (b) Claim total CENVAT credit of: > Input/ Input services used only for taxable goods/services. > Input/ Input services which are commonly used for both taxable & exempted goods and services. (c) CENVAT credit of input/ input services used exclusively for exempted goods or services not allowed. (d) Buyer cannot claim CENVAT credit of 6% of value of exempted goods &~~6%~~**7%** of value of exempted services. **[**7% for exempted service w.e.f 1.6.2015 vide Notification No. 14/2015, dated 19th May 2015**]**
Rule 6(6): The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case excisable goods removed without payment of duty are either	Ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol, in terms of the provisions of S.No.40A of the Table in notification No.12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated that 17th March, 2012. [Notification No. 21/2015, 7th Oct 2015]
W.E.F 14.5.2015, PENALTY PROVISIONS OF RULE 15 IS ALIGN WITH THE SEC. 11AC/SEC. 78.	**RULE 15: CONFISCATION AND PENALTY** (1) If any person takes or utilizes CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then (i) all such goods shall be liable to confiscation and

CS Rahul Harsh

	(ii) ~~such person shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be or Rs. 2,000, whichever is greater.~~ (ii) such person shall be liable to a penalty **in terms of section 11AC(1)(a) or (b) of the Central Excise Act or section 76(1) of the Finance Act, as the case may be. - no fraud case** **(2)** In a case fraud the manufacturer or service provider shall also be liable for penalty u/s. 11AC(1)(c),(d) or (e) **of the Central Excise Act.** or **u/s 78(1)**, as the case may be. **(3)** Any order under sub rule (1), (2) or (3) shall be issued by the Central Excise Officer following the principles of natural justice.

CENTRAL EXCISE RULES, 2002

RULE 25: CONFISCATION AND PENALTY	Subject to the provisions of section 11AC of the Act, any producer, manufacturer, registered person of a warehouse **or an importer who issues an invoice on which CENVAT credit can be taken** or a registered dealer shall be liable to a penalty not exceeding the amount of duty or **5000** whichever is greater, if the said person – **[Notification8/2015, w.e.f 14.5.2015]** (a) Removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or (b) Does not account for any excisable goods produced or manufactured or stored by him; or (c) Engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or (d) Contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty.
	Section 31(c): "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under subsection (1) of section 32E is made: **However,** when **any** proceeding is referred back (in any appeal or revision, as the case may be **(omitted w.e.f. 14.5.15)**, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding within the meaning of this clause;
	Section 32: Customs and Central Excise Settlement Commission The settlement commission shall consists of a Chairman and many Vice-Chairmen and other members as

CS Rahul Harsh

SETTLEMENT COMMISSION	the central govt. thinks fit and function within the department of the Central Govt. dealing with customs and central excise matters.
	Section 32B In the event of the occurrence of any vacancy in the office of the chairman by reason of his death, resignation or otherwise, the Vice-Chairman, or **the members (w.e.f. 14.5.15)** as the central Govt. may by notification authorize in this behalf, shall be act as the Chairman until the date on which a new chairman, appointed in accordance with the provisions of this chapter to fill such vacancy, enters upon his office. When the chairman is unable to discharge his functions owing to absence, illness or any other cause the Vice- Chairman, or **the members** as the central Govt. may by notification authorize in this behalf, shall discharge the functions of the Chairman until the date on which chairman resumes his duties.
	Section 32k: Power of Settlement Commission To Grant Immunity From Prosecution And Penalty: The settlement commission may, if it is satisfied that any person who made application for settlement has cooperated with settlement commission and made full and true disclosure of his duty liability, grant immunity from penalty and prosecution after imposing conditions it my thinks fit.
	Settlement commission has no jurisdiction to entertain the matters in relation to the goods specified u/s. 123 of the Customs Act, 1962 which includes Gold. Hence, settlement commission cannot entertain in respect of gold smuggling. [Shri Ram Niwas Verma (Delhi HC)]- on 1.10.2015 CBEC also clarified the same].

CLASSIFICATION

➢ **Circular No. 1008, Dated, 20.10.2015: Clarification regarding tower and blades constitute an essential component of Wind Operated Electricity Generators (WOEG).** ➢ **Whether exemption Notification No. 12/2012-Central Excise, dated 17.03.2012 covers part/components of Wind Operated Electricity Generators (WOEG).**	In the case of in case of **M/s Gemini Instratech**, dated 13th Aug 2015 the Apex Court (while deciding the eligibility of wind mill doors and electrical boxes of WOEG for exemption) has held that the above parts (such as Tower, Nacelle, Rotor, blades, doors) may be treated as parts and components of wind operated electricity generators eligible forexemption under serial no. 332 of Notification No. 12/2012-Central Excise, dated 17.03.2012.
➢ **Circular No. 1007, dated 12.10.2015:**	Coconut oil packed in retail packs of 50 ml, 100 ml and 200 ml and 500 ml would be classifiable as coconut oil (Heading N0. 1513) and not as hair oil (heading No. 3305). Based on Judgment of Capital Technologies(2015)(CESTAT). [Earlier, CBEC circular No. 890, classified that edible coconut oils packed upto 200 gm shall be classified as hair oil., since appeal filed by Dept. rejected by SC, therefore the CBEC withdraw its Circular No. 890/2009]

REGISTRATION

Registration not required for every manufacturing unit engaged in the manufacture of aluminium roofing panels (falling under tariff item 7610), if such roofing panels are consumed at the site of manufacture for execution of the project and the manufacturer of the goods has a centralized billing or accounting system in respect of such goods manufactured by different manufacturing units and opts for registering only the premises or office from where suchcentralized billing or accounting is done. [Notification No.17/2015]

MISCELLANEOUS

Section 37 of the Central Excise Act, 1944 empowers Central Government to frame various rules. W.e.f 14.5.2015, amendment has made under this section to fix minimum penalty under various rules from Rs. 2000 to Rs. 5000.

Adhoc Rate increased [Notfn.14 /2015]: In case of Manufacturer/ Service Provider, producing / providing excisable goods / taxable services, as well as and exempted goods / services, he can avail full CENVAT Credit but pay **7%** on the value of Exempted Goods and Exempted Services. [**Note:** Earlier Rate was 6%] **w.e.f.01.06.2015.**

Application to AAR – Resident Firms included:

w.e.f. 01.03.2015, **Resident Firms** can also apply to AAR. Firm shall have the meaning assigned to it in Sec.4 of the Indian Partnership Act, 1932 and includes –

1. LLP u/s 2(1)(n) of the LLP Act, 2008,
2. LLP which has no Company as its Partner,
3. Sole Proprietorship i.e. Individual who engages himself in an activity defined u/s 23A(a) of CEA,
4. One Person Company u/s 2(62) of the Companies Act, 2013.

CUSTOMS

PENALTY FOR IMPORTATION OF GOODS [SEC. 112]

While the improperly imported goods can be seized and confiscated under Section 111, the person responsible for this wrongful act can be penalized under Section 112 of the Customs Act, 1962.

Penalty under Section 112 of the Customs Act, 1962 may be imposed on any person who in relation to any goods does or omits to be any act of commission or omission, which would render such goods liable to confiscation under

Section 111 of that Act. The quantum of penalty is as under.

Particulars	Quantum of Penalty Not Exceeding –
Prohibited goods	The value of goods or Rs. 5,000 whichever is greater.

Dutiable goods	The duty sought to be evaded or Rs. 5,000 whichever is greater. [old provision] W.e.f 14.05.2015: 10% of duty sought to be evaded or rs. 5000, whichever is higher and subject to section 114A. Further, where duty and interest payable is paid within 30 days from the date ofcommunication of the order, the amount of penalty shall be 25% of the penalty so determined.
In case the value stated in Bill of Entry or Baggage Declaration is less than actual value	The difference between (actual value and declared value thereof) or `5,000 whichever is greater
In respect of goods that are prohibited and in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The value of the goods) or (the difference between the actual value and the declared value thereof) or `5,000 whichever is greater
In the case of dutiable goods in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.	(The Duty sought to be evaded) or (the difference between the actual value and declared value) or `5,000 whichever is greater

PENALTY FOR ATTEMPT TO EXPORT GOODS IMPROPERLY [SECTION 114]

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as follows -

(a) In case of prohibited goods, penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater
(b)In the case of dutiable goods, other than prohibited goods, penalty not exceeding the sought to be evaded or Rs. 5000, whichever is the greater; [old provision]

w.e.f 14.05.2015: 10% of duty sought to be evaded or Rs.**5000, whichever is higher and subject to section 114A.**
Further, where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.

(c)In the case of any other goods, penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

SERVICE TAX

SECTION 66B: RATE OF SERVICE TAX – DEC 16 EXAMS OF CS

Period	Service Tax	EC&SHEC	Swatch Bharat Cess	KrishiKalyanCess	Effective Rate of Service Tax
From 1.4.2015 to	12%	3%	N.A	N.A	12.36%

31.05.2015					
From 01.06.2015	14%	Not applicable (subsumed in revised rate of service tax)	0.50 % on taxable value.	N.A	14.5 %
From 01.06.2016	14%	N.A	0.50%	0.50%	15% - APPLICABLE FOR CS EXAM DEC 16

The Central Government, being satisfied that it is necessary in the public interest so to do, has exempted all taxable services from payment of such amount of the Swachh Bharat Cessleviable under sub-section (2) of section 119 of the said Act, **which is in excess of Swachh Bharat Cess calculated at the rate of 0.5%** of the value of taxable services: Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15th day of November, 2015

Calculation of Swachh Bharat Cess in case of composite tax rate: In all case of composite rate w.e.f 15.11.2015 Swachh Bharat Cess is to be charged as under – Composite Tax X 0.5% / 14%

SWACHH BHARAT CESS (SBC) FREQUENTLY ASKED QUESTIONS (FAQ)

Background Chapter VI (Section 119) of the Finance Act 2015 contains provisions for levy and collection of Swachh Bharat Cess (SBC). The Government has announced 15th November, 2015 as the date from which the provisions of Section 119 would come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers). Simultaneously, Government has also notified levy of Swachh Bharat Cess at the rate of 0.5% on all taxable services. Effectively, the rate of SBC is 0.5% and new rate of service tax plus SBC is14.5%. The proceeds from this cess will be exclusively used for Swachh Bharat initiatives.

In this context certain points have been clarified with the help of FAQs given below:

Q.1 What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015 on all the taxable services at the rate of 0.5% of the value of taxable service.

Q.2 What is the date of implementation of SBC?

Ans. The Central Government has appointed 15th day of November, 2015 as the date from which provisions of Swachh Bharat Cess will come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers).

Q.3 Whether SBC is leviable on exempted services and services in the negative list?

Ans. Swachh Bharat Cess is not leviable on services which are fully exempt from service tax or those covered under the negative list of services.

Q.4 Why has SBC been imposed?

Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q. 5 Where will the money collected under SBC go?

Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilise such sums of money of the SBC for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6 How will the SBC be calculated?

Ans. SBC would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax.

Q. 7 Whether SBC would be required to be mentioned separately in invoice?

Ans. SBC would be levied, charged, collected and paid to Government independent of service tax. This needs to be charged separately on the invoice, accounted for separately in the books of account and paid separately under separate accounting code.

Q. 8 Whether separate accounting code is there for Swachh Bharat Cess?

Ans. Yes, for payment of Swachh Bharat Cess, there is a separate accounting code. These are as follows:

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

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

EVERY THING YOU NEED TO KNOW ABOUT THE KRISHI KALYAN CESS:

Introduction

The Hon'ble Finance Minister of India Mr.ArunJaitley had proposed to impose a cess which is known as the KrishiKalyanCess (KKC). Subject to the provisions of Chapter VI, Clause 158 of the Finance Bill, KKC is a service tax subject to all taxable services levied at 0.5% of the value of such services, taxable during the Budget 2016, with effect from 1st June 2016

What is a Cess?

According to Article 270 of the Constitution of India, cess is imposed by the Parliament, and levied and collected by the Government of India and distributed between the Union and the States, albeit it is not needed to be shared with the State Governments. A cess is a tax that is levied by the government to raise funds for a specific purpose. Here, the KKC is a cess which shall be levied as a service tax on all taxable services at the rate of 0.05% of the value of taxable Services and collected in accordance with the provisio of Chapter VI of the Finance Act, 2015. With the introduction of this cess, all the funds accrued from it shall be first credited to the consolidated fund of India and further utilized for improving the welfare and agriculture lands of farmers in India.

Application of KKC on Works Contract Services

As per Rule 2(a) of Service Tax (Determination of Value) Rules, 2006 , the application of the KKC on works contract services would be levied on the value so arrived at 15% where such effect rate of tax of original works and other than original works would be 6% (15%* 40%) and 10.5% (15% * 70%) respectively.

CENVAT Credit Rules, 2004 on KKC

The CENVAT credit payment shall be made available and utilized for the payment of KKC. A claim of refund of KKC in service tax is permitted, which is also allowed in the CENVAT Credit. Both Exporters of goods and services garner a refund due to no restriction of its availment.

Mode of Payment of KKC

For the purposes of payment of the KKC, a notification of a separate accounting code would be delivered to establishments (hotels, restaurants etc.) that levy and charge the cess on invoices itself, which in furtherance are paid to the government along with the service tax and swachhbharatcess.

Calculations of KKC

For the prime purposes of understanding how the KKC is calculated, let's take an example of the following –
If we take Rs 100 as for the service charged, the Service Tax will be Rs. 14 at 14% rate, here the Swachh Bharat Cess includes a 0.5 % and in the case for the KKC it will also be of Rs. 0.05 at 0.5%.
So the total chargeable amount will be Rs. 115.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

From which date is the *KrishiKalyanCess* applicable?

KrishiKalyanCess has been made applicable since the 1st of June 2016. *KrishiKalyanCess* will not apply to the services that are covered under the "Negative List" and "Mega Exemption List". According to the Notification No. 22/2015, *KrishiKalyanCess* will not be applicable on services that are exempted from the levy of Service Tax.

Rule 5 of **Taxation Rules, 2011** will refer to the applicability in the cases on ongoing contracts as of 1st June 2016. So, if the payment is made before the said date, this cess will not be applicable.

Where can I find legal provisions for the *KrishiKalyanCess*?

KrishiKalyanCess was introduced in the Union Budget of 2016-17. A statutory provision was made under **Chapter VI, Clause 158** in the **Finance Bill, 2016** for levying of this cess.

How will the *KrishiKalyanCess* money be utilized?

The proceeds gathered from the *KrishiKalyanCess*will be exclusively used for financing initiatives for the improvement of agricultural techniques and welfare of farmers. The proceeds collected through the *KrishiKalyanCess* will be accumulated in the Consolidated Fund of India and the Central Government after due consideration of the laws set by the Parliament regarding the utilization of this money for its specified purpose.

Is the KrishiKalyanCess applicable on the service of Reverse Charge Mechanism?

KrishiKalyanCess will apply to the service of Reverse Charger Mechanism as it applies to all taxable services. So, *KrishiKalyanCess* is applicable along with Service Tax on the services that are availed and covered under the Reverse Charge Mechanism.

What will be the liability in the case of Reverse Charge Mechanism when the services availed are before 1st June 2016, and the payment for those services are made after 1st June 2016?

In this case of Reverse Charge Mechanism Rule, 7 of Point of Taxation Rules will apply. According to them, the cess is considered as an application on the day the payment is made. Hence, in this case, *KrishiKalyanCess* will apply.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

If a service is covered under Abatement, then what would be the effective rate of tax?

Services on which tax is levied at a certain percentage will attract *KrishiKalyanCess* on the same percentage of the value as provided under the Notification No. 26/2012, so this notification will apply in the same way to *KrishiKalyanCess* as it does to Service Tax.

Is Cenvat Credit on payment of the *KrishiKalyanCess* permitted under Cenvat Credit Rules, 2004?

Yes, Cenvat Credit is available for the payment of *KrishiKalyanCess* and will be utilized only for the payment of KrishiKalyanCess. Due to this reason, separate accounts are to be maintained. One can also claim a refund for the filling of *KrishiKalyanCess*.

Refund for *KrishiKalyanCess* shall be allowed to the exporter of services and the exporter of goods as there is no restriction of its availability.

Is the *KrishiKalyanCess* same as the *KrishiKalyan Surcharge*?

No**,** *KrishiKalyanCess* and **KrishiKalyan Surcharge** are entirely different in nature.

In order to provide a stable and predictable tax structure and to reduce black money, it was announced in the Union Budget that a domestic taxpayer can declare his undisclosed income or income represented in the form of any asset can be shown by paying a tax of 30% and surcharge on the existing tax at 7.5% and a penalty of 7.5% which becomes a huge total of 45%. Such a declaration will have immunity from future prosecution.

The surcharge of 7.5% in the above scenario is known as **KrishiKalyan Surcharge** and will be used in the upliftment of the agriculture and rural economy[2].

Accounting code for payment of KrishiKalyanCess is "507-Krishi KalyanCess" vide Circular No. 194/04/2016 dated May 26, 2016

Conclusion

The whole idea behind the introduction of *KrishiKalyanCess* is noble with an intention to improve and upgrade overall agrarian economy, which constitutes a huge portion of the Indian GDP. However, it doesn't help the various initiatives taken by the government which is aimed at simplification of the business process.

Central Government needs to provide enough ease to projects like Make in India, Startup India for doing Business. KrishiKalyanCess is likely to disturb these initiatives due to its complexity as this will lead to an addition to the cost of goods and will ultimately result in an increase in the rates of goods and services.

The Central Government is making a lot of effort to introduce the Goods and Services Tax ("GST") in India. The logic of introducing and removing new levies every year under the banner of new and different types of cesses seems unnecessary at this stage.

So we can see that KrishiKalyanCess has its advantages and disadvantages. But if this cess is used in an appropriate manner, then it can be very beneficial to the agrarian society.

DEFINITION OF SERVICE TAX

Explanation 2 w.e.f 14.05.2015: Following are however regarded as services and chargeable to tax :

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.'; Section 65B (23A): "foreman of chit fund" shall have the same meaning as is assigned to the term "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982;';

Section 65B'(31A): "lottery distributor or selling agent" means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organized by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998.

What constitute Consideration for the purpose of Service Tax?

Clause (a) of Explanation to Section 67, provides that "consideration" includes:-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, **except in such circumstances, and subject to such conditions, as may be prescribed [Refer Rule 5]**;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in

addition to the fee or commission, or, the discount received, [i.e, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket] .**[Substituted by the Finance Act, 2015 w.e.f 14.05.2015]**

Negative List Section 66D

- **Manufacturing of Goods: services by way of carrying out any process amounting to manufacture**

or production of goods excluding alcoholic liquor for human consumption"

"process amounting to manufacture or production of goods" means a process on which excise duty is leviable whether under Central Excise Act, 1944; or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or 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. [Section 65**B(40)]**

Note: w.e.f 1.6.2015 services by way of carrying out any process amounting to manufacture of alcoholic liquor for human consumption shall be liable for service tax.

- **Activities of betting/gambling/lottery**

Betting, gambling or lottery shall not be taxable. However, auxiliary services used for organizing or promoting betting or gambling event.

For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B- 1.6.2015

- Any service provided to business entity by Government or local authority is outside the Negative

list and therefore taxable from a date to be notified. Currently, **only support service is taxable.**

COMPOSITION SCHEME

(1) Option to air Travel Agent

In this case service tax is payable by the assessee as per the following optioni) **14%** on commission; or
ii) **0.7%** of the basic fare in the case of domestic bookings, and
iii) **1.4%** of the basic fare in the case of international bookings,
[Before 1.6.2015, the rate was 12%, 0.6% and 1.2% as the case may be plus EC & SHEC]

(2) Life insurance business: An insurer carrying on life insurance business shall have the following option to

pay Service tax –
(i) @ **14%** on the risk premium;
Risk premium = Gross premium charged from a policy holder (-)amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;
(ii) In all other cases: [only if break up not known]
First year: @ **3.5%** of the premium charged from policy holder
Subsequent year: **@ 1.75 %** of the premium charged from policy holder
[Before 1.6.2015, the rate was 12%, 3% and 1.5% as the case may be plus EC and SHEC]

Rule 6(7C): Optional composition scheme for Distributor or Selling agent of lotteries.

- **Who can take the benefit:** The distributor or selling agents rendering the taxable service of promotion, marketing
or organizing/ assisting in organizing lottery.
- **Effective rate:**

Where the guaranteed lottery prize payout is > 80%	Rs. ***8200* on** every or part of rs. 10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.
Where the guaranteed lottery prize payout is ≤ 80%	Rs. ***12800* on** every or part of Rs. 10 lakh of aggregate face value of lottery tickets printed by the organizing state for a draw.
[Before 1.6.2015, the rate was 7000 and 11,000, as the case may be plus EC and SHEC]	

SPECIAL TAX RATE / COMPOSITION SCHEME.

1) <u>Life insurance business</u>
An insurer carrying on life insurance business shall have the following option to pay Service tax –

(i) @ **14%** on the riskpremium;

Risk premium = Gross premium charged from a policy holder (-)amount allocated forinvestment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing ofservice;

(ii) In all other cases: [only if break up notknown]
First year: @ **3.5%** of the premium charged from policy holder **<u>(In case of single premium annuity policies 1.4% instead of 3.5% from 1.4.2016)</u>**

Subsequent year: **@ 1.75 %** of the premium charged from policy holder
SPECIAL TAX RATE / COMPOSITION SCHEME

ABATEMENTS AT A GLANCE

<u>NOTIFICATION NO. 26/2012</u>

CS Rahul Harsh

Sl. No.	Description of taxable	Percent-age	Conditions
1	Services in relation to financial leasing including hire purchase	90%	Nil.
2	(i) Transport of goods byrail (ii) Transport of passengers, with or without accompanied belongings byrail	70%	NO CENVAT credit on inputs, capital goods. **From 1.4.2016 CENVAT credit on input service will be allowed.**
	(iii) Transport of goods in container by rail by any person other than Indian railways (from	**60%**	**Only CENVAT credit on input service is allowed.**
3	Transport of goods in a vessel	**70%**	NO CENVAT credit on inputs, capital goods. **From 1.4.2016 CENVAT credit on input service will be allowed.**
4	Services of goods transport agency in relation to transportation of:- **Used household goods** Other goods	 **60%** **70%**	Service provider is not allowed to take CENVAT credit on inputs, capital goods and input service.
5	Transport of passengers by air, with or without accompanied belongings (i) Economyclass (ii) other than economyclass	 60% 40%	NO CENVAT credit on inputs and capital goods.
6	Transport of passengers, with or without accompanied belongings, - (a) by a contract carriage other than motorcab. (b) by a radiotaxi	60%	**No CENVAT credit on inputs, capital goods and input services.**
7	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	40%	NO CENVAT credit on inputs and capital goods.
8	**Services provided by foreman to a chit fund under the Chit Funds Act, 1982. (From 1.4.2016)**	**30%**	**NO CENVAT credit on input, capital goods and input service.**

CS Rahul Harsh

9	Renting of **motor cab** designed to carry passengers Motor cab means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward. **Cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement. (from1.4.2016)**	60%	NO CENVAT credit on inputs, capital goods. CENVAT credit on input service allowed as under – (a) 100% CENVAT credit of such input service received from a person who is paying service tax on 40% of the value;or (b) 40%CENVATcreditofsuchinput service received from a person who is payingservicetaxonfullvalue(i.e,no abatement is claimed);
10	**Construction service**	**70%**	**No CENVAT Credit on input and the amount charged includesvalue ofland.**
11	**<u>Tour operator Service</u>:** (a) **Services solely of arranging or booking accommodation for any person in relation to atour** (b) **anyotherservicesinrelationtot our**	**90%** **70%**	**(1) NO CENVAT credit on inputs, capital goods and input services (other than the input service of a tour operator). This means input service received by a touroperator from another tour operator shall beallowed.**

REVERSE CHARGE

Changes from 1.4.2016:

1. Anyserviceprovided(exceptPostalDepartment,Airport/port,Transportserviceandrentingof immovableproperty)byGovernmenttoBusinessentityunderreversecharge.(earlieronlysupport service of Government was under reversecharge).

2. Services provided by mutual fund agents/distributors to an asset management company arenow under forward charge (earlier was under reverse charge). Hence, such agents are now liable topay tax and they are eligible to claim SSPexemption.

MEGA EXEMPTION

(A) Exemption withdrawn:

(1) a person represented on an arbitral tribunal to an arbitral tribunal: w.e.f 1.4.2016 An Individual advocate representing arbitrator in the tribunal shall be taxable under reverse charge, if service provided to business entity located in taxable territory and turnover exceeding ₹ 10 lakhs in the preceding financialyear

(2) Exemptiontoconstruction,erection,commissioningorinstallationoforiginalworkspertaining to monorail or metro is being withdrawn, in respect of contracts entered into on or after 1st March 2016.

(3) Exemption on transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is beingwithdrawn.

(B) New Exemption from1.4.2016

(1) Services provided by the Indian Institutes of Management (IIM) by wayof:-
(a) 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted byIIMs,
(b) 5 year Integrated Programme in Managementand
(c) Fellowship Programme inManagement,

(2) Services provided by EPFO, IRDA, SEBI (only w.r.t Investors protection service), National Centre for Cold Chain Development and Pension Fund Regulatory and Development Authority (PFRDA) ofIndia.

(3) “Niramaya‟ Health Insurancescheme.

(4) Skill/vocational training by DeenDayalUpadhyayGrameenKaushalyaYojana training partners.

(5) ServicesofassessingbodiesempanelledcentrallybyDirectorateGeneralofTraining,Ministry of Skill Development &Entrepreneurship.

(6) Servicesbywayofconstruction,erectionetc.houseunderthe“In-situRehabilitationofexisting slum dwellers” under the scheme of Housing for All (HFA) (Urban) Mission / Pradhan MantriAwasYojana(PMAY).

(7) Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing scheme ofGovt.

(C) Following services provided by Govt./Local authority are exempt from 13.4.2016–

(1) ServicesprovidedbyGovernmentor alocalauthoritytoabusinessentitywhoseturnoverdoes not exceed ₹ 10 lakhs in the preceding financial year. (from1.4.2016)

(2) ServicesprovidedbyGovernmentoralocalauthoritytoanotherGovernmentorlocalauthority. (except transport service and Airport/portservice)

(3) Services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or deathcertificate;

(4) ServicesprovidedbyGovernmentoralocalauthoritywherethegrossamountchargedforsuch services does not exceed ₹ 5000/- (except postal service, Transport service and Airport/port service).

(5) ServicesprovidedbyGovernmentoralocalauthoritybywayoftoleratingnon-performanceof a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under suchcontract;

(6) Services provided by Government or a local authority by wayof-
(a) registration required under any law for the time being inforce;

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being inforce;

(7) Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of**agriculture;**

(8) Services by **Government, a local authority** or a governmental Authority in relation to any function entrusted to municipality/ **Panchayat** areexempt.

(9) ServicesprovidedbyGovernmentbywayofdeputingofficersafterofficehoursoronholidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges(MOT).".

(D) Exemption Modified/restored

(1) Exemption limit of performing in the field of folk or classical art forms of music, dance or theatre, is being increased from ₹1 lakh to ₹ 1.5 lakh per performance. (w.e.f1.3.2016).

(2) Construction and repair services of Govt. civil structure, educational Institute, hospitals, residential complex, shall be exempted if contract entered before1.3.2015.
(3) Construction of an airport, port shall be exempted if contract entered before1.3.2015.

Exemption applicable from 1.04.2015 (i) Services by operator of Common Effluent Treatment Plant by way of treatment of effluent; (ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables; (iii) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;	"Zoo" means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public but does not include a circus and an establishment of a licensed dealer in captive animals.

CS Rahul Harsh

(iv) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;	
Exemption applicable from 1.6.2015 Services by way of right to admission to,- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet; (ii) recognised sporting event; (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs. 500 per person.".	"recognised sporting event" means any sporting event,- (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or (ii) covered under entry 11.

From 1.6.2015, job work processing in relation to alcoholic liquors for human consumption is liable to service tax.

(4) Services by the following persons in respective capacities – are exempt.
(a) sub-broker or an authorised person to a stock broker;
(b) authorised person to a member of a commodity exchange;
(c) mutual fund agent to a mutual fund or asset management company;
(d) distributor to a mutual fund or asset management company;
(e) selling or marketing agent of lottery tickets to a distributer or a selling agent;

REVERSE CHARGE

From a date to be notified by the Central Government, all services (except renting and services covered under section 66D(a)(i)/(ii)/(iii)] provided by government to business entity are under full reverse charge. [Currently, only support services are under reverse charge.

Section 86 (w.e.f 14.05.2015): in relation to matter of rebate under service tax no appeal can be filed to CESTAT rather it is filed for revision before central Govt. [similar to excise]

Rule 6(6A) of the Service Tax Rules, 1994: Where the assessee does not pay self-assessment tax, the same shall be recoverable alongwith interest in the manner prescribed u/s. 87 of the Act. *[Omitted from 14.05.2015 and consequently section 73(1B) has been inserted]*

Amendment of section 73 In section 73 (i) in sub-sections (1), (1A), (2A) and (3), for the words "eighteen months", wherever they occur, the words "thirty months" has been substituted; (ii) in sub-section (4B), in clause (a), for the words "whose limitation is specified as eighteen months in", the words "falling under" has been substituted.

OTHER EXEMPTION

(1) Notification No. 17/2015-Service Tax, dated 19.5.2015: Taxable services provided by way of,
(i) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL); (ii) transportation

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to the power generating companies or plants, under the Power System Development Fund Scheme of the Ministry of Power shall be exempted till 31.3.2017 from the whole of the service tax, subject to the satisfaction of prescribed conditions.
However, the exemption shall not be available if such Re-gasified Liquefied Natural Gas (RLNG) and Liquefied Natural
Gas (LNG), is used for generation of electrical energy by captive generating plant as defined in clause (8) of section 2
of the Electricity Act, 2003:

Notification No. 19/2015-Service Tax, dated 14.10.2015: The service tax payable between 1.7.2012 to 13.10.2014, on the service provided by an Indian Bank or other entity acting as an agent to the MTSO (Money Transfer Service Operators) in relation to remittance of foreign currency from outside India to India, shall not be required to be paid. [by virtue of section 11C of the Central Excise Act,1944 read with Section 83 of the Finance Act,
1994]

Circular No.186/5/2015-ST, dated 5.10.2015:
(1) A single composite service need not be broken into its components and considered as constituting separate services, if it is provided as such in the ordinary course of business. **Therefore, i**f ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc. are provided by GTA in the ordinary course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on the entire amount and not only on transport charges.
(2) It is also clarified that transportationof goods by road by a GTA, in cases where GTA undertakes toreach/deliver the goods at destination within a stipulated time, should be considered as 'services of goods transport agency in relation to transportation of goods' for the purpose of abatement of 70%, so long as (a) the entire transportation of goods is by road; and (b) the GTA issues a consignment note, by whatever namecalled.

Letter C. No. ST-20, dated 13.8.2015: NO service tax shall be levied on Pick-up or the Home Deliveries of the food sold by the Restaurant. In the given case, the dominant nature of the transaction is that of sale and not service as the food is not served at the Restaurant and other element of service such as live entertainment, air conditioning, or personalized hospitality are also offered.

Chit Services liable for Service Tax

- ✓ **Following significant amendments has been made by the Finance Act, 2015 w.e.f 14.5.2015:**

w.e.f. 14.05.2015 Service includes any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in Money or Actionable Claim, including the activity carried out by a –

1. Lottery Distributor / Selling Agent in relation to promotion, marketing, organising, selling of Lottery or facilitating in organising Lottery of any kind, in any other manner,

CS Rahul Harsh

2. Foreman of Chit Fund for conducting or organising a Chit in any manner.

Note:

(a) **Lottery Distributor / Selling Agent** means a person appointed or authorised by a **State** for the purpose of promoting, marketing, selling or facilitating in organising Lottery of anykind, in any manner, organized by such State as per the Lotteries (Regulation) Act, 1998.

(b) **Foreman** of Chit Fund shall have the same meaning as per Sec.2(j) of the Chit Funds Act,1982.

- ✓ **Support Services: Support Services** provided by **Government** to Business Entities is taxable under **Reverse Charge.** The term **Support Services** to be changed to "Any Services". **(w.e.f. date yet to be notified).**

- ✓ **Government defined: Government means :**1. Central/State Government, 2. Union Territory, 3. The Departments of above. **Government excludes** Any Entity, whether created by a Statute or otherwise, the accounts of which are **not** required to be kept in accordance with Article 150 of the Constitution or the Rules made thereunder.

- ✓ **Example of Services to RBI taxable:** Any Service provided to the RBI is liable for ST. [**Example:** Agency Services by any Bank to the RBI, for which Fee / Commission / other Consideration is received by the Agent Bank is still liable for ST.]

- ✓ **Yoga included** Charitable Activities eligible for ST Exemption include advancement of religion or spirituality or **yoga.**

- ✓ **Alcoholic Liquor manufacture liable for ST** 1. Any process amounting to manufacture of goods (**w.e.f. 01.06.2015** excluding Alcoholic Liquor for Human Consumption) are exempt from ST under the Negative List. 2. **W.e.f. 01.06.2015,** manufacture of Alcoholic Liquor for Human Consumption shall attract ST. (whether intermediate process or the entire process itself) **[Notification No. 6/2015–ST, dated 01.03.2015]**

- ✓ **Amusement Park omitted from Negative List: W.e.f. 01.06.2015** The Service "Admission to Entertainment Event or access to Amusement Facility" is omitted from the Negative List. Thus, it becomes fully taxable. However, the following events **continue to be exempt [Notification No. 6/2015–ST, dated 01.03.2015]** –

  - Exhibition of Cinematographic Film, Circus, Dance, Or Theatrical Performances including Drama or Ballet.
  - Recognized Sporting Events. [**Note:** "Recognised Sporting Event" means any Sporting Event, organised by a Recognised Sports Body where the participating team or individual represent any District, State, Zone or Country, or those Sporting Events where Sponsorship of the same is exempt under Notfn.25/2012–ST.]
  - Concerts, Pageants, Award Functions, Musical Performances or Non–Recognized Sporting Events where the consideration for such admission is **upto**Rs. **500** per person.

CS Rahul Harsh

- **Ambulance Service exempt W.e.f. 01.04.2015 Ambulance** Services provided by any Service Provider is exempt from ST. **[Notification No. 6/2015–ST, dated 01.03.2015]**

✓ **Exemption for Intermediary at Rural Area – Banking and Insurance related Notfn.No.20/2015 – ST dated 21.10.2015:** Exemption is available as under –

1. Business Facilitator or a Business Correspondent to a Banking Company with respect to a **Basic Savings Bank Deposit** Account covered by **Pradhan Mantri Jan DhanYojana**in the Banking Company's **Rural Area Branch**, by way of account opening, cash deposits, cash withdrawals, obtaining e–life certificate, Aadhar seeding,

2. Services by any person as an **Intermediary** to a Business Facilitator or a Business Correspondent with respect to the above services,
3. Business Facilitator or a Business Correspondent to an **Insurance Company** in a **rural area.**

Note: Basic Savings Bank Deposit Account means an account opened under relevant RBI Guidelines.

Life Insurance Schemes exempt from ST: 1. Pradhan Mantri Suraksha BimaYojana, **w.e.f. 30.04.2015**
2. Pradhan MantriJeevanJyotiBimaYojana, **w.e.f. 30.04.2015**
3. Pradhan Mantri Jan DhanYojana, **w.e.f. 30.04.2015**
4. Varishtha Pension BimaYojana**w.e.f. 01.04.2015**
[Notification No. 12/2015–ST, dated 30.04.2015]

Specified Pilgrimage Services exempt: Services provided by following **Specified Organisations**in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, under bilateral arrangement, is exempt from ST.

1. Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking or
2. Haj Committee of India and State Haj Committees constituted under the Haj Committee Act, 2002, for making arrangements for the pilgrimage of Muslims of India for Haj.

Specified Services exempt: 1. Services by operator of Common Effluent Treatment Plant by way of Treatment of Effluent.
2. Services by way of pre–conditioning, pre–cooling, ripening, waxing, Retail Packing, labelling of fruits & vegetables which do not change or alter the essential characteristics of the Fruits or Vegetables.
3. Services by way of Admission to a Museum, National Park, Wildlife Sanctuary, Tiger Reserve or Zoo.
4. Service provided by way of exhibition of Movie by an Exhibitor to the Distributor or an Association of Persons consisting of the Exhibitor as one of its Members.
5. Services by way of collection of Contribution under Atal Pension Yojana (APY)

Note: First 4 items w.e.f. 01.04.2015 [Notfn.6/2015–ST] 5th Item w.e.f. 30.04.2015 [Notfn.12/2015–ST]

Person liable for ST Registration :w.e.f. 01.03.2015 Any person other than the Service Provider, in case of Reverse ChargeMechanism, where he is liable for Service Tax – should register under ST within 30 days from the date on which ST is levied or Business is commenced, whichever is **later.**

INTEREST UNDER EXCISE, SERVICE TAX & CUSTOMS

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

SECTION 11AA (CENTRAL EXCISE)	SECTION 75 (SERVICE TAX)	SECTION 28AA (CUSTOMS)
(a) Rate - 18% p.a (b) No concessional rate. (c) interest can be waived – where, — (i) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 37B/Sec 151A; and (ii) such amount of duty is voluntarily paid in full, **within 45 days** from the date of issue of such order, without reserving any right to appeal against the said payment at any subsequent stage of such payment (d) Interest shall be calculated from the due date of payment of duty till the date of actual payment.	**(a) Rate:** For delay up to 6 months - 18% p.a For Next 6 months – 24% p.a Beyond 1 year – 30% p.a (b) The concession of 3% on applicable rate is provided to assesse whose turnover does not exceed Rs. 60 lakh in preceding Financial year. [In such case the applicable rate = 15%/21%/27% as the case may be (c) Interest cannot be waived. (d) Interest shall be calculated after the expiry of due date of payment till the date of actual payment.	**SAME AS CENTRAL EXCISE.** But the period of interest shall be calculated from the first day of the month succeeding the month of due date of payment.

PENALTY UNDER EXCISE/SERVICE TAX

CASE	SECTION 76 AND SECTION 78 [SERVICE TAX]	SECTION 11AC [CENTRAL EXCISE]	SECTION 28 & 114A [CUSTOMS]
	SECTION 76:	**penalty = upto 10% of the duty so**	Provided that where notice u/.s 28(1)(a) has

NO FRAUD CASE	**(1) Maximum penalty –** 10% of service tax. (In addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding 10% of the amount of such service tax) **No penalty:** where service tax and interest is paid within a period of 30 days of the date of service of notice u/s. 73(1), no penalty shall be payableand proceedings in respect of suchservice tax and interest shall be deemed to have been concluded;[before adjudication] **Penalty reduced to 25% of the penalty imposed in the order:** where service tax, interest and also the reduced penalty is paid within a period of 30 days of the date of receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the penalty imposed in that order. ***[after adjudication]*** (2) Where the amount of penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of penalty and the period of 30 days will be counted from the date of such order.	**determined or Rs 5,000; whichever is higher.** **No penalty:** same as service tax. **Reduced penalty**: same as service tax.	been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice, no penalty shall be levied and theproceedings against such person or other persons to whom the said notice is served shall be deemed to be concluded. [proviso to section 28(2) w.e.f 14.5.2015].

CS Rahul Harsh

FRAUD CASE *(where any duty/tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty.)*	Section 78: (1) **Penalty shall be 100% of the amount of service tax**: (in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to 100% of the amount of such service tax) (2) **Reduced penalty**: (i) **Penalty shall be 50% of the service tax**: (where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011. upto 14.05.2015 (both Days inclusive), the penalty shall be 50% of the service tax so determined.) (ii) **Penalty shall be 15% of the service tax**: (where service tax, interest and reduced penalty is paid **within a period of 30 days of the date of service of notice** under the proviso to section 73(1), the penalty payable shall be 15% of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded.) – ***before adjudication*** (ii) **Penalty shall be 25% of the service tax**: (where service tax, interest and reduced penalty is paid within a period of 30 days of the date of the date of	Same as Servicetax	Quantum of penalty [Section 114A] (1) **Normally 100% of duty evaded**. (2) In case the duty, interest and reduced penalty are deposited **within 30 days** from the date of communication of the order :**25%** of the duty payable. (3) **Section 28(5)**: penalty reduced to ~~25%~~ 15% of duty if duty, interest and reduced penalty is paid within 30 days of receipt of the notice and inform the proper officer of such payment in writing. **[w.e.f 14.5.2015]**. (3) The amount of penalty will increase or decrease if the duty amount is subsequently increased or decreased in appeals. In such a case the benefit of reduced penalty will be availed only when such increased duty, interest and penalty are deposited within 30 days of the determination of increased duty.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

CS Rahul Harsh

	receipt of the order of the Central Excise Officer determining the amount of service tax u/s. 73(2), the penalty payable shall be 25% of the service tax so determined.) ***- after adjudication*** (3) Where the amount of service tax or penalty is increased by the Commissioner (appeal), CESTAT/ any Court, then the benefit of reduced penalty will be available on such increased amount of service tax and the period of 30 days will be counted from the date of such order.		

<u>explanation 1.— For the removal of doubts, it is hereby declared that—</u>
(i) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where no show cause notice has been issued before 14.5.2015 shall be governed by the amended penalty provision.
(ii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where show cause notice has
been issued but an order determining duty has not been passed before 14.5.2015, shall be eligible to closure of proceedings on payment of duty and interest (voluntary payment) or on payment of duty, interest and reduced penalty, subject to the condition that the payment of duty, interest and penalty, as the case may be, is made within 30 days from 14.05.2015. **[under customs except provisions of sections 135, 135A and 140 all other proceedings deemed to be closed].**
(iii) any case of non-levy, short-levy, non-payment, short-payment or erroneous refund where an order determining
duty under section 11A(10) is passed after the 14.05.15 shall be eligible to payment of reduced penalty under clause
(b) or clause (e) of sub-section (1), subject to the condition that the payment of duty, interest and penalty is made within 30 days of the communication of the order.

<u>Section 80 of the Finance Act, 1994 is omitted which provides for waiver of penalty u/.s 76 or 77, in a case of reasonable cause. Hence, w.e.f 14.05.2015 penalty under service tax cannot be waived.</u>

PAYMENT OF SERVICE TAX. From 1.4.2016, the facility of quarterly payment extended to:- (i) a one person company whose aggregate value of taxable services provided from one or more premises does not exceed ₹ 50 lakh in the previous financial year;

<u>CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372</u>

CS Rahul Harsh

FILING OF RETURN (1) In addition to the half yearly return from F.Y 2016-17, an Annual return of service tax also to be filed on or before 30th November of the succeeding financial year. In case of delay, fine of ₹100 per day of default or ₹20,000; whichever is lower, shall be levied. Annual Return can be revised within one months from the date of filing.

Miscellaneous

UTILIZATION OF CENVAT CREDIT FOR DIFFERENT TYPES OF EXCISE DUTY

EC & SHEC on Excise duty/service Tax

Credit of EC and SHEC on inputs or capital goods or input service received in the factory of manufacture of final
product on or after the 1/3/2015 for excise or premises of service provider on or after 1/6/2015 for service tax
can be utilized for payment of the basic excise duty/service tax. [For capital goods: balance 50% of goods received in 2014-15 also allowed]

Note: However, CBEC is yet to provide a clarification on utilization of old unutilised CENVAT Credit on EC and SHEC.

Swachh Bharat Cess

(a) It is levied @ 0.5% on value of all taxable services w.e.f 15.11.2015.

(b) With respect to Swachh Bharat Cess neither CENVAT Credit is available on it nor CENVAT Credit can be utilised for its payment.

PROCEDURES AND CONDITIONS FOR EXPORT TO ALL COUNTRIES EXCEPT BHUTAN WITHOUT PAYMENT OF DUTY [Notification No. 42/2001]

Notification No. 23 /2015, dated 30.10.2015:

One of the procedures is that the exporter shall takes all necessary steps including packages, seal the goods to getsthe ready for dispatch. **However, where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner or Chief Commissioner of Central Excise subject to safeguard as may be specified by him in the permission. The safeguards shall, inter-alia, include the following:-**

(i) method of verification of quantity and quality of goods including testing of goods where necessary at the place of removal or despatch and at the port of export or SEZ, where the goods are received;

(ii) no remission of duty shall be allowed for loss of goods within transit;

(iii) permission shall be given on case to case basis for a specified period not exceeding one year at a time and may be withdrawn in case of misuse; and

(iii) any additional safeguards as may be specified.

Circular No. 1006/13/2015-CX, dated the 21th September, 2015: Board circular should not be binding on departmental officer in the following cases-

(i) Board Circulars contrary to the judgements of Hon'ble Supreme Court should not be followed.

(ii) The above direction would also apply to the judgements of Hon'ble High Court where Board has decided that no

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

appeal would be filed on merit.
All pending cases decided after the date of the judgement would, conform to the law laid by the Hon'ble Supreme Court or High Court, as the case may be, irrespective of whether the circular has been rescinded or not.

Notification NO. 18/2015, 06.7.2015:

Use digital signature

(i) Only Class 2 or Class 3 Digital Signature Certificate duly issued by the Certifying Authority in India (**Eg. SIFY / E-Mudhra / N-CODE)**shall be used.

(ii) Must intimate the following details to the jurisdictional Deputy Commissioner or Assistant Commissioner of Central Excise, at least 15 days in advance: -
1. name, e-mail id, office address and designation of the person authorised to use the digital signature certificate;
2. name of the Certifying Authority;
3. date of issue of digital certificate and validity of the digital signature with a copy of the certificate issued by the Certifying Authority along with the complete address of the said Authority:

However, in case of any change in the details submitted to the jurisdictional Deputy Commissioner or Assistant Commissioner, complete details shall be submitted afresh within 15 days of such change.

Maintaining and persevering records in e-form

(i) Assessee who has more than one factory or service tax registration shall maintain separate electronic records for each factory or each service tax registration.

(ii) Every assessee who opts to maintain records in electronic form shall ensure that appropriate backup of records in electronic form is maintained and preserved for a period of 5 years immediately after the financial year to which such records pertain.

(iii) Every assessee who opts to maintain records in electronic form, shall on request by a Central Excise Officer, produce the specified records in electronic form and invoices through e-mail or on a specified storage device in an electronically readable format for verification of the authenticity of the document and the request for such records and invoices shall be specified in the letter or e-mail by the Central Excise Officer.

(iv) A Central Excise Officer, during an enquiry, investigation or audit, may direct an assessee to furnish printouts of the records in electronic form and invoices and may resume printouts of such records and invoices after verifying the correctness of the same in electronic format; and after the print outs of such records in electronic form have been signed by the assessee or any other person authorised by the assessee in this regard, if so requested by such Central Excise Officer.

Guidelines for launching prosecution under the Central Excise and Service Tax Circular No. 1009/16/2015-CX, dated the 23rd October, 2015.

Monetary Limit:	Prosecution should normally be launch if evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified u/s. 9(1) of the Central Excise Act, 1944 or u/s. 89(1) of the Finance Act, 1994 is equal to or more than Rs.**1 Crore.**

	Notwithstanding the above limits, prosecution can be launched in the case of a company/assessee habitually evading tax/duty or misusing Cenvat Credit facility. A company/assessee would be treated as habitually evading tax/duty or misusing Cenvat Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past 5 years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than Rs.**1 Crore**.
Authority to sanction prosecution	The sanction of the Principal Chief/Chief Commissioner of Central Excise or Service Tax as the case may be required. In respect of cases investigated by the Directorate General of Central Excise Intelligence (DGCEI), the sanction of Principal Director General/ Director General, CEI is required.
Procedure for sanction of prosecution	(i) Department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed mens rea (guilty mind) which would indicate his guilt. (ii) In the case of public limited companies, prosecution should be launched only against persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it and not against all directors. (iii) Prosecution should not be launched in cases of technical opinion regarding interpretation of law. (iv) Availability of adequate evidence and standard proof required in a criminal prosecution. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be sufficient to establish the fact for prosecution. (v) Decision on prosecution should be normally taken immediately on completion of the adjudication proceedings. However, Hon'ble Supreme Court of India in the case of RadheshyamKejriwal [2011(266)ELT 294 (SC)] has *interalia*, observed the following :- (i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating

	criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent in nature to each other and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution." Therefore, prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.
Publication of names of persons convicted:	Section 9B of the Central Excise Act, 1944 also made applicable to Service Tax vide section 83 of the Finance Act,1994 grants power to publish name, place of business etc. of the person convicted under the Act by a Court of Law. The power is being exercised very sparingly by the Courts. It is directed that in deserving cases, the department should make a prayer to the Court to invoke this section in respect of all persons who are convicted under the Act.
Compounding of Offences	Section 9A(2) of the Central Excise Act, 1944 also made applicable toService Tax vide section 83 of the Finance Act,1994 provides for compounding of offences by the Principal Chief/ Chief Commissioner on payment of compounding amount. All persons against whom prosecution is initiated or contemplated should beinformed in writing, the offer of compounding.

Circular No. 1010/17/2015, 23.10.2015: Arrest of a person in relation to offences specified underclause (a) to (d) of sub-section (1) of Section 9 of the Central Excise Act, 1944 or under clause (i) or (ii) of sub-section (1) of section 89 of the Finance Act, 1994, may be made in cases where the evasion of Central Excise duty or Service Tax or the misuse of Cenvat Credit is equal to or more than Rs.**1 crores**.

Circular No. 23/2015, 29.9.2015: Refund/Claim of Safeguard Duties as Duty Drawback

(1) With respect to Safeguard Duties which are leviable under Section 8B or Section 8C of the Customs Tariff Act,1975 read with Section 12 of the Customs Act, the Board clarifies that these are rebatable as Drawback in terms of Section 75 of the Customs Act. Since Safeguard Duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such Safeguard Duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. This would necessarily mean that drawback shall be admissible only where the inputs which suffered Safeguard Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

CS Rahul Harsh

(2) Where imported goods subject to Safeguard Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 [Circular No.27/2015, dated 23.10.2015]

Threshold limit for launching prosecution and exceptions:

Baggage and Outright smuggling cases:

Nature	Threshold limits
Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules	CIF value of the goods involved is Rs.20 lakh or more;
Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Customs Act, 1962 or goods notified under section 123 of the Customs Act, 1962 or foreign currency	the value of offending goods is Rs.20 lakh or more;

Appraising Cases/ Commercial Frauds:

Nature	Threshold limits
(i) In cases related to importation/exportation of trade goods (i.e. appraising cases) involving- (a) wilfulmis-declaration in value/description; (b) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962,	CIF/FOB value of the offending goods is Rs.1 crore or more;
(ii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act 1962	if the amount of drawback or exemption from duty is Rs.1 crore or more;

Exceptions:

(i) The above threshold limits would not apply in case of persons indulging habitually in such violations or where criminal intent is evident in ingenious way of concealment, where prosecutions can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc. providedthe cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit.

(ii) The threshold limits would also not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/ business trips etc.) detected at the time of departure back from India, exceeding the threshold limits of Rs.20 lakh , if it is claimed that the currency has been legally acquired and brought into India but not declared inadvertently, prosecution need not be considered as a routine.

(iv) Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

Stage for launching of prosecution:

Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution.

(a) In case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(b) In case where arrest has not been made but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is Rs.20 lakh or more. Further, if the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available. ***[by virtue apex court decision in the case of RadheshyamKejriwal [2011]***

Circular No.28/2015, dated 23.10.2015: Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962

While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, should be effected only in exceptional situations.

(1) Threshold limit of arrest increased: same as prosecution (As discussed above)

However, the threshold limit would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may beconsidered irrespective of value of offending goods involved.

More Amendments for DEC 16:

CS Rahul Harsh

Amendment of section 78A In section 78A, the following Explanation has been inserted:

"Explanation.— For the removal of doubts, it is has clarified that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, and the proceedings with respect to a notice issued under sub-section (1) of section 73 or the proviso to sub-section (1) of section 73 is concluded in accordance with the provisions of clause (i) of the first proviso to section 76 or clause (i) of the second proviso to section 78, as the case may be, the proceedings pending against any person under this section shall also be deemed to have been concluded.".

Amendment of section 89 In section 89, in sub-section (1), for the words "fifty lakh rupees", at both the places where they occur, the words "two hundred lakh rupees" has been substituted.

Section 101 - Special provision for exemption in certain cases relating to construction of canal, dam, etc.—Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of July, 2012 and ending with the 29th day of January, 2014 (both days inclusive) in respect of taxable services provided to an authority or a board or any other body: (i) set up by an Act of Parliament or a State Legislature; or (ii) established by the Government, with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works. Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times. Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

Section 102 - Special provision for exemption in certain cases relating to construction of Government buildings.—Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of 84 February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of— (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession; (b) a structure meant predominantly for use as— (i) an educational establishment; (ii) a clinical establishment; or (iii) an art or cultural establishment; (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date. Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times. Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

Section 103 - Special provision for exemption in certain cases relating to construction of airport or port.—Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or

CS Rahul Harsh

installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015. Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times. Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.".

Summary of Latest Notifications of SERVICE TAX – Applicable for CS DEC 16 exams

Issue	Description
	Rate of Service Tax – SwacchBharathCess (SBC)
SBC at 0.5%	SwacchBharathCess (SBC) is effective from **15.11.2015** [Notfn. No.21/2015 – ST dt. 06.11.15]
No SBC on Exempt / Negative List	SBC shall **not** be applicable on all services which are exempt from Service Tax by a notification or special order or otherwise not leviable to Service Tax u/s 66B of FA, 1994. **[Notfn. No.22/2015 – ST dt. 06.11.15] / [Notfn. No.05/2016 – ST dt. 17.02.16]**
SBC on abated services	SBC is levied on the value as determined under the Service Tax (Determination of Value) Rules, 2006. If Taxable Services are subject to **abatement** as per Notfn. 26/2012, then, ST and SBC shall be applied the value after reducing the abatement. **[Notfn. No.23/2015–ST dt12.11.15]**
SBC on	SBC shall be applicable even for the services for which Service Receiver is liable for Service Tax. **[Notfn. No.24/2015 – ST dt. 12.11.15]**
Rebate of SBC for Export	SBC paid on all the Input Services used for the **Export Services** is eligible for Rebate. **[Notfn. No.03/2016 – ST dt. 03.02.16]**
Classification – Job Work Vs Man Power Supply [Circular No.190 / 9 / 2015 dt. 15.12.15]	Services received by **Apparel Exporters** – whether "Job Work" or "Manpower Supply"? **Answer:** The nature of Manpower Supply Service is distinct from the service of Job Work, and is dependent on facts of each case, described as under – 1. The characteristics of "Manpower Supply" Service are– (a) The Supplier provides manpower, at the disposal and temporarily under effective control of the Service Receiver during thecontract. (b) Service Provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the ServiceRecipient. (c) The Value of Service has a direct correlation to manpower deployed, i.e. charge will be made for supply of manpower even if manpower remainsidle. 2. The characteristics of "Job Work" Service are– (a) ServiceProviderisassignedajob,e.g.fabrication/stitching,labeling,etc.ofgarments (b) Service Provider is accountable for the job he undertakes. It is for the Service Provider to decide how he deploys and uses his manpower. Service Receiver is concerned only as regard the job work. He is not concerned about themanpower. (c) The Value of Service is function of quantum of job work undertaken, i.e. number of pieces fabricated, etc. It is immaterial as to whether the job worker undertakes job work in his Premises or in the Premises of ServiceReceiver.
	Point of Taxation Rules 2011

CS Rahul Harsh

POT Rules in case of New Taxable Services	1. **Expln 1 to Rule 5:** Rule 5 relating to New Taxable Services shall be applicable for new levy on services, i.e.SBC 2. **Expln 2 to Rule 5:** New Levy or Tax is applicable on all the situations except those situations mentioned in Rule 5, i.e. if the payment is received after Effective Date / if the payment is received before Effective Date but the Invoice is issued after 14 days from effective date, then the Service is subject to **tax / new levy**. **[Notfn.10/2016 dt.01.03.2016]**

Issue	Description
Change in ST Liability – Impact on Rule 7 – Proviso to Rule 7	1. If there is change in the liability or extent of liability for the person liableto pay ST under Reverse ChargeMechanism,and 2. If the Service has been provided and the Invoice is issued before thedateof such change, but payment has **not** been made as onsuchdate, POT= Dateof Issuanceof Invoice. This means that only the Old Rate shall be considered for calculation of ST liability. **[Notfn. No.21/2016 dt. 30.03.16]**
POT in case of Services by Govt./ Local Authority (Rule 7)	In case of services provided by Government / Local Authority to any Business Entity, the POT shall be **earlier** of thefollowing–**[Notfn No.24/2016 dt.13.04.2016]** 1. Date on which the payment (part / full) is due (as mentioned in the Invoice / Bill / Challan / or other document issued by the Govt./ Local Authority demanding duty)or 2. Date of actualpayment.
Valuation	
Rule 6 of ST (Determination of Value) Rules 2006	(a) InterestfordelayedpaymentofconsiderationisexcludedfromTaxableValueofService. **(b)** But, this provision shall **not** apply to any service provided by Government or Local Authority to a Business Entity, where payment for such service is allowed to be deferred on payment of interest or any other consideration. (This means that ST needs to be paid even on such Interest charged by the Govt./ Local Authority) **[Notfn No.23/2016 dt.13.04.2016]**
Negative List and Exemptions	
Services provided by Government / Local Authority Services	*1* w.e.f. 01.04.2016, All Services provided by the Government or Local Authority to Business Entities are liable for Service Tax. **[Notfn.No.06/2016 – ST dt. 03.02.16]** ***Note:*** *Earlier onlySupportServicesweretaxable.Now**all**theservicesaretaxable.* 2. **Exemption:** Such Services are exempt if the turnover of the Business Entity does notexceed Rs. 10 Lakhs in Preceding Financial Year.

CS Rahul Harsh

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

Exemption for Services provided by Government / Local Authority	**Services by Government or a Local Authority are exempt in the following situations:** 1. Services to another Government or Local Authority. [This exemption shall **not** apply to Sec. 66D(a)(i) (Postal Services), S.66D(a)(i)(ii) (Aircraft/Vessel) and S.66D(a)(iii)(Transportation). 2. Issuance of Passport, Visa, Driving Licence, Birth Certificate or DeathCertificate, 3. If the Gross Amount charged for such services does not exceedRs. 5,000. • This exemption shall **not** apply to Sec.66D(a)(i) (Postal Services), Sec.66D(a)(i)(ii) (Aircraft / Vessel) and Sec.66D(a)(iii)(Transportation). • If Continuous Supply of Service is provided by the Government or a Local Authority, the exemption shall apply only where the Gross Amount charged for such service does not exceed Rs. 5,000 in a financialyear 4. Tolerating non–performance of a contract for which consideration in the form of Fines or LiquidatedDamagesispayabletotheGovernmentorLocalAuthorityundersuchcontract. 5. Registration required under any law for the time being in force, Testing, Calibration, Safety Check or Certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being inforce. 6. Assignment of Right to use natural resources to an individual farmer for agriculturepurposes. 7. ActivityinrelationtoanyfunctionentrustedtoaPanchayatunderArt.243GoftheConstitution. 8. Assignment of Right to use any natural resource where such right to use was assigned by the Government or Local Authority before 01.04.16. [This exemption shall apply only to Service Tax Payable on one time charge payable, (in full upfront or in instalments) for assignment of right to use such naturalresource.] 9. Allowing a Business Entity to operate as a Telecom Service Provider or use Radio Frequency Spectrum during Fin Year 2015–16 on payment of Licence Fee or Spectrum UserCharges. 10. Deputing Officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment ofMerchant Overtime charges (MOT). 11. ActivityinrelationtoanyfunctionentrustedtoaMunicipalityunderArt.243WoftheConstitution. **[Notfn. No.22/2016 dt. 13.04.2016] (Also See C.No.192/02/2016 dt. 13.04.16 below)**
ST on Senior Advocates Services	Services by Senior Advocates to a person who is ordinarily carrying out any activity relating to Industry, Commerce, Business or Profession is liable for ST. **[Notfn.09/2016–ST dt. 01.03.16]** Senior Advocate is as per the definition of Sec.16 of The Advocates Act, 1961.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

Issue	Description
Services by a person represented on an Arbitral Tribunal to an Arbitral Tribunal	1. Services by an Arbitral Tribunal to a Business Entity whose Turnover exceeds Rs. 10 Lakhs in PFY aretaxable. 2. As per Sec.2(d) of the Arbitration and Conciliation Act 1996 "Arbitral Tribunal" means a Sole Arbitrator or a Panel ofArbitrators. 3. So, the term Arbitral Tribunal refers to **natural persons** on the Arbitral Tribunal. Hence, services by person represented on the Arbitral Tribunal to the Arbitral Tribunal would not be taxable because the Service Receiver [i.e. Arbitral Tribunal] is not a BusinessEntity. **[Circular No.193/03/2016 – ST dt. 18.05.2016]**
Specified Degrees by IIM are exempt	Services provided by the Indian Institutes of Management (IIM), as per the guidelines of the Central Government, to their students, by way of the following educational programmes, (except Executive DevelopmentProgramme)– **[Notfn.No.09/2016 – ST dt.01.03.16]** 1. Two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute ofManagement. 2. Fellow Programme inManagement. 3. Five Year Integrated Programme inManagement.
Services of Assessing Bodies	Exemption is given for services of Assessing Bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme. **[Notfn.No.09/2016 – ST dt. 01.03.16]**
Services of training under Government Schemes	Exemption is given for Services provided by Training Providers (Project Implementation Agencies) under DeenDayalUpadhyayaGrameenKaushalyaYojana under the Ministry of Rural Development by way of offering Skill or Vocational Training Courses certified by National Council For Vocational Training. **[Notfn.No.09/2016 – ST dt.01.03.16]**
Specified Construction Services provided to Govt / LA/GA exempt	1. Exemption is given to services provided to the Government, Local Authority or a Governmental Authority by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alterationof— (a) a Civil Structure or any other original works meant predominantly for use **other than** for commerce, industry, or any other business orprofession, (b) a Structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment,or (c) a Residential Complex predominantly meant for self–use or the use of their Employees or other persons specified in the Explanation 1 to Sec.65B (44) of FA,1994. **2.** Exemption available if above services are under a contract which had been entered into**prior** to the 01.03.2015 and on which appropriate Stamp Duty had been paid **prior** to such date. 3. However, the above exemption is not applicable w.e.f.01.04.2020. **[Notfn.No.09/2016 – ST dt. 01.03.16]**
Construction Services for Specified Schemes exempt	Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – 1. A civil structure or any other original works pertaining to the 'In–situ rehabilitation of existing Slum Dwellers using land as a resource through private participation' under the Housing for All (Urban) Mission/Pradhan MantriAwasYojana, only for existing **SlumDwellers**. **2.** A civil structure or any other original works pertaining to the Beneficiary–led individual house construction/enhancement under the Housing for All (Urban) Mission/Pradhan MantriAwasYojana. **[Notfn.No.09/2016 – ST dt.01.03.16]**
Construction Services for Rail Industry	Exemption is given for services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of Railways, **excluding MonorailandMetro**. **[Notfn.No.09/2016 – ST dt.01.03.16]** **Note:** Services by way of construction, erection, commissioning or installation of original works pertaining to Monorail or Metro, where contracts were entered into before 01.03.2016, on which appropriate stamp duty has been paid before that date, shall remain exempt.

CS Rahul Harsh

Constructions of Low Cost Houses	Exemption is given for Construction of Low Cost Houses up to a Carpet Area of 60 Square Metres per house in a Housing Project approved by the Competent Authority under – 1. The "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan MantriAwasYojana. 2. any Housing Scheme of aStateGovernment. **[Notfn.No.09/2016–ST dt.01.03.16]**

Issue	Description
Construction Services for Port / Airport	1. Exemption is given for Construction Services by way of construction, erection, commissioning, or installation of original works pertaining to an **Airport or Port** provided under a contract entered into **prior** to 01.03.2015 and on which appropriate stamp duty, had been paid prior to suchdate. 2. Exemption is available only if the Ministry of Civil Aviation or the Ministry of Shipping in the Government of India certifies that the contract had been entered into before01.03.2015. 3. This exemption shall not apply on or after 01.04.2020. **[Notfn.09/2016–ST dt01.03.16]**
Exemption for Art Performances	Exemption is given for services by an **Artist** by way of a performance in folk or classical art forms of (i) Music, or (ii) Dance, or (iii) Theatre, if the consideration charged for such performance is not more than Rs. 1,50,000. **[Notfn.09/2016–ST dt 01.03.16]** **Note:** The earlier exemption limit was Rs. 1,00,000 per performance.
Exemption for Stage Carriage	w.e.f. 01.06.2016, Exemption is given for Transportation of Passengers by Stage Carriage (except AC Stage Carriage) **[Notfn.09/2016–ST dt 01.03.16]**
Ropeway, etc. liable for ST	Transportation of Passengers by Ropeway, Cable Car or aerial tramway is liable for Service Tax. **[Notfn.09/2016–ST dt 01.03.16]**
Exemption for Specified Insurance Schemes	Exemption is given for the following Insurance Schemes – **[Notfn.09/2016–ST dt 01.03.16]** 1. 'Niramaya' Health Insurance Scheme implemented by Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act,1999 2. Services of Life Insurance Business provided by way of Annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the PFRDA Act,2013
Exemption for specified Regulatory Authorities	1. Services provided by Employees' Provident Fund Organisation (EPFO) to persons governed under the Employees' Provident Funds and Miscellaneous Provisions Act,1952, 2. Services provided by IRDA to Insurers under the IRDA Act,1999. 3. Services provided by SEBI by way of protecting the interests of Investors in Securities and to promote the development of, and to regulate, the SecuritiesMarket. 4. Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation & Farmer's Welfare by way of Cold Chain KnowledgeDissemination. 5. Services by way of Transportation of Goods by an Aircraft from a place outside India upto the Customs Station of Clearance in India. **[Notfn.09/2016–ST dt01.03.16]**
Meaning of Approved Vocational Courses	"**Approved Vocational Education Course**" means — 1. a course run by an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961or 2. a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development andEntrepreneurship. [**Notfn.09/2016–ST dt 01.03.16 –** Provisions w.e.f. date of approval of Finance Bill 2016.]
Meaning of Educational Institution	"**Educational Institution**" means an Institution providing services by way of – 1. Pre–School Education and Education up to Higher Secondary School orequivalent 2. Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being inforce, 3. Education as a part of an Approved Vocational EducationCourse. [**Notfn.09/2016–ST dt 01.03.16 –** Provisions w.e.f. date of approval of Finance Bill 2016.]

CS Rahul Harsh

Exemption for IT Software related services	ST shall **not** be applicable on services in relation to IT Software recorded on a media (classified under Chapter 85 of I Schedule to CETA 1985), subject to the following conditions – 1. It is required to declare the Retail Sale Price (RSP) on the package as per the Legal Metrology Act 2009 or Rulesthereto. 2. The Assessable Value of such IT Software (whether imported / domestically produced) is determined as per Sec.4A of the CE Act for calculating Excise Duty / ACD u/s3(1) 3. The appropriate Excise Duties or Customs Duties are paid by the Manufacturer / Duplicator / Copyright Holder or by the Importerrespectively.

CS Rahul Harsh

Issue	Description
	4. A declaration made by the Service Provider that he has not collected any amount inexcessof the RSP declared on suchpackage. **Note:** The term "Appropriate Duties of Excise / Customs" means the **Actual Duty Payable** after considering the applicable exemptions under Notifications. **[Notfn.11/2016 dt.01.03.2016]**
Exemption for Bio–Incubator Services	Exemption is available for services provided by the **Bio–Incubators** recognized by the Bio–Technology Industry Research Assistance Council, under Department of Bio–Technology, Government of India. **[Notfn. No.12/2016 dt. 01.03.2016 w.e.f. 01.04.2016]**
Testing/ Allied Activities (for agriculture) exempt	All testing and ancillary activities to testing such as Seed Certification, Technical Inspection, Technical Testing, Analysis, Tagging of Seeds, rendered during testing of seeds, are covered within the meaning of 'Testing". Therefore, such services are not liable to Service Tax, if related to agricultural produce. **(Circular No.189/8/2015 dt.26.11.15)**
ST Rebate in relation to Export Goods	Rebate shall be claimed in relation to all the services which are used for the export of excisable goods, if such services are used beyond the Factory or any other place or premises of production or manufacture of the said goods, for their exports. **[Notfn. No.01/2016 – ST dt.03.02.16]** Further, the eligible % of Rebate is increased for all the eligible Export Goods. ***Note:*** *Earlier the benefit of Rebate was available for all services used beyond the place of removal. However, the word Place of Removal is removed, and substituted with "Factory".*
Abatements	

Changes in Taxable Values

Nature of Service	Taxable Value	Conditions
Transport of goods by Rail	30%	CENVAT Credit on Inputs and Capital Goods should not be availed
Transport of goods in containers by rail by any person other than Indian Railways	40%	Same as above
Transport of Passengers, with or without accompanied belongings byRail	30%	Same as above
Transport of Passengers by Vessel	40%	CENVAT Credit on Inputs and Capital Goods should not be availed. CENVAT Credit on Input Services can be availed.
Transportation of Goods by Road (except Used Household Goods)	30%	CENVAT Credit on Inputs, Capital Goods and Input Services should not be availed by the Service Provider.
Transportation of Goods by Road of Used HouseholdGoods	40%	Same as above
Services by Foreman of Chit Fund in relation to Chit	70%	Same as above
Transport of Passengers by Stage Carriage (01.06.16)	40%	Same as above

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

	Notes: (a) **Tour Operator:** In case of Tour Operator Services, all services (other than Services which are exclusively for booking or arranging accommodation for any person) shall have taxable value of 30%. There is no separate % for Package Tour as existedbefore. (b) **Construction:** All Construction Services shall have a uniform Taxable Value of 30% of Total Amount Charged (if the Land Value is included). (**Note:** Earlier, Taxable Value is 25% in case of certain constructions based on the area / value. Such % is removed w.e.f.01.04.16.) **(c) Motorcab:** • For Renting of Motorcab, Taxable Value shall be 40% of the Total AmountCharged. • Total Amount Charged = Amount Charged for the Service + Fair Market Value (FMV) of all Goods (including Fuel) and Services supplied by the Recipient(s) in or in relation to the service (whether or not supplied under the same contract or any othercontract) • FMV of the goods and services so supplied may be determined in accordance with the generally accepted accounting principles. **[Notfn.No.08/2016 – ST dt.01.03.16]**

CS Rahul Harsh

<table>
<tr><th>Issue</th><th colspan="2">Description</th></tr>
<tr><th colspan="3">Reverse Charge Mechanism</th></tr>
<tr><td rowspan="4">Person liable to pay ST in Reverse Charge [Notfn. 18 / 2016 dt. 01.03.16wef 01.04.16]</td><th>Nature of Service</th><th>Person liable to pay ST</th></tr>
<tr><td>Services of Mutual Fund Agent / Distributor</td><td>Such Agent / Distributor [Not the Mutual Fund / Asset Management Company.]</td></tr>
<tr><td>Services provided or agreed to be provided by a Selling or Marketing Agent of Lottery Tickets in relation to a Lottery</td><td>Lottery Distributor or Selling Agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998.</td></tr>
<tr><td>Legal Services provided by Senior Advocate</td><td>Senior Advocate [Not the Business Entity.]</td></tr>
<tr><th colspan="3">Service Tax Procedures</th></tr>
<tr><td>Extended Due date for TN & Puducherry</td><td colspan="2">Due Date for payment of Service Tax for the month of November 2015 is extended to 20.12.2015 for Tamil Nadu and Puducherry. (Notfn. No.26/2015 – ST dt. 09.12.15) / (Notfn. No.27/2015 – ST dt. 18.12.15)</td></tr>
<tr><td>Interest Rates for delayed payment of Service Tax</td><td colspan="2">Interest Rates for delayed payment of Service Tax is as under:
<table><tr><th>Situation</th><th>Rate of Simple Interest</th></tr><tr><td>ST collected, but not paid to the Central Government on or before the due date</td><td>24% p.a.</td></tr><tr><td>Other ST dues</td><td>15% p.a.</td></tr></table>[Notfn. No.13/2016 dt. 01.03.16 w.e.f. Date of Approval of Finance Bill 2016]</td></tr>
<tr><td>Interest on Excess Colln of ST</td><td colspan="2">Interest Rate shall be 15% p.a. in relation to Service Tax collected in excess.
[Notfn. No.14/2016 dt. 01.03.16 w.e.f. Date of Approval of Finance Bill 2016]</td></tr>
<tr><td>Due Dates for Payment of ST for OPC – [Notfn. 19/2016 dt. 01.03.2016 w.e.f. 01.04.16]</td><td colspan="2">If the Assessee is a One Person Company whose Aggregate Value of Taxable Services provided from one or more Premises is ≤ Rs. 50 Lakhs in the Previous Financial Year –
1. Due Dates for ST Payment shall be 5th/ 6th from the end of every quarter, and for the quarter ending with March, the due date shall be 31st March.
2. Option to pay ST on realization basis is available.
[Provisions similar to that of Individuals / Sole Proprietor / Partnership Firms / HUFs]</td></tr>
<tr><td>Presumptive ST on Single Premium Policies</td><td colspan="2">In case of Single Premium Annuity Policies (where the amount allocated for investment is not intimated to the Policy Holders at the time of taking the Policy / where the amount is not at all allocated), ST shall be 1.4% of the Single Premium charged from the Policy Holder.
[Notfn. No.19/2016 dt. 01.03.2016 w.e.f. 01.04.16]</td></tr>
<tr><td>Annual Returns to be filed by the Assessee</td><td colspan="2">1. Every Assessee shall submit an Annual Return for a financial year, within 30th November of the succeeding Financial Year. [Form and manner shall be notified separately.]
2. Central Government has powers to grant exemption from filing the Annual Returns, subject to conditions and limitations.
3. Time Limit for filing can be extended by Central Government by way of special order.
4. The above Returns can be revised within 1 month from the date of submission, provided the Original Returns are filed within due date.
5. For delay in filing the Returns, Penalty shall be Rs. 100 per day (Maximum: Rs. 20,000)
[Notfn. No.19/2016 dt. 01.03.2016 w.e.f. 01.04.16]</td></tr>
<tr><td>Service Tax and Central Excise (Furnishing of Annual Information Returns) Rules 2016 – [Notification No.04/2016 dt.</td><td colspan="2">1. Who has to file AIR: The following persons must file the AIR:
(a) A duly authorized Officer of RBI
(b) A duly authorized Officer of the State Electricity Board (EB) / Electricity Distribution / Transmission Licencee / any other Entity entrusted with such functions by Central / State Government.
2. Details to be filed in AIR: The following details must filed in the AIR:
<table><tr><td>RBI</td><td>Details of Foreign Remittances for the receipt of Services declared under specified codes, in relation to entities whose value of remittances aggregates to more than Rs. 50 Lakhs in a Financial Year.</td><td>AIRA I</td></tr></table></td></tr>
</table>

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

CS Rahul Harsh

<table>
<tr><th>Issue</th><th colspan="3">Descriptio</th></tr>
<tr><td rowspan="2">15.02.2016]</td><td>EB</td><td>Electricity consumed by Manufacturers using an Induction or Rolling Mill to manufacture goods falling under Section XV of the I Schedule to CETA, 1985 (whose aggregate value of clearances >Rs. 150 Lakhs in a Financial Year (Manufacturers details must be identified by the CCCE & ST / PCCCE & ST and intimated to EB within 30th June of the nextFY)</td><td>AIRA II</td></tr>
<tr><td colspan="3">3. Time Limit: Within 31st December of the Next Financial Year. This date may be extended by CBEC by an order, for reasons recorded in writing. The AIR must be filed commencing from the Financial Year2015–16.

4. Mode ofFiling:
(a) AIR should be filed electronically in Form AIRF along with Annexures. It must be signed and verified by the Authorized Officer of RBI /EB.
(b) Return must be filed with Director General of Systems and Data Management or any other Officer or Agency authorized to receivereturns.
(c) CBEC shall appoint any other Commissioner or Officer above his rank (designated as Annual Information Returns – Administrator) to specify the procedures, data structure, formats and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrievalpolicies.</td></tr>
<tr><td>NOTIFICATION NO. 27/2016</td><td colspan="3">In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has provided that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, shall be applicable mutatis mutandis for the purposes of KrishiKalyanCess. This notification shall come into force from the 1st day of June, 2016.</td></tr>
<tr><td>NOTIFICATION NO. 30/2016</td><td colspan="3">In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, read with subsection (5) of section 161 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, has made following further amendments in the Notification No. 12/2013-Service Tax, dated the 1stJuly, 2013 In the said notification, in paragraph 3, in sub-paragraph (III),- (i) for clause (b), the following clause has been substituted:- "(b) the SEZ Unit or the Developer shall be entitled to refund of- (i) the service tax paid on the specified services on which ab-initio exemption is admissible but not claimed; and (ii) the amount distributed to it in terms of clause (a)."; (ii) in clause (ba), (a) in item (i), after the words "Swachh Bharat Cess", the words "and KrishiKalyanCess" has been inserted; (b) in item (ii) for the words "by effective rate of Swachh Bharat Cess", the words "by sum of effective rates of Swachh Bharat Cess and KrishiKalyanCess" has been substituted. This notification shall come into force from the 1st day of June, 2016.</td></tr>
</table>

CS Rahul Harsh

Circular No.190/9/2015 -Service Tax Dated 15th December, 2015- Applicability Of Service Tax On The Services Received By Apparel Exporters In Relation To Fabrication Of Garments	Board has noted that certain field formations are taking a view that service tax is payable on services received by the apparel exporters from third party for job work. Apparently field formations are taking a view that the services received by apparel exporters is of manpower supply, which neither falls under the negative list nor is specifically exempt. However, trade is of the view that the services received by them is of job work involving a process amounting to manufacture or production of goods, and thus would fall under negative list [section 66D (f)] and hence would not attract service tax. The matter has been examined. The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle. On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work and not about the manpower. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver. If the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, it would be covered under negative list in terms of Section 66D(f) read with section 65B (40) of the Finance Act, 1994. However, every job work is not covered under the negative list. Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.

Clarification on Taxability of Services by Govt. / Local Authority to Business Entities: (Circular No.192/02/2016 dt. 13.04.16)

Issue	Clarification
Service Tax on Taxes, Cesses or Duties	Taxes, Cesses or Duties levied are **not** consideration for any particular Service and hence not leviable to Service Tax. **Example:** Excise Duty, Customs Duty, Service Tax, VAT, CST, Income Tax, Wealth Tax, Stamp Duty, Taxes on Professions, Trades, Callings or Employment, Octroi, Entertainment Tax, Luxury Tax and Property Tax.
Service Tax on Fines and Penalties	Fines and Penalties imposed for violation of a Statute / Bye–Laws / Rules or Regulations are **not** subject to Service Tax. Fines and Damages payable to Government / Local Authority for non–performance of the contract are specifically exempt under Notfn. 25/2012 dt. 20.06.12.
Service provided in lieu of Fee	1. Any activity undertaken by Government or a Local Authority against a consideration constitutes a "Service" and liable to ServiceTax. 2. It is immaterial whether such activities are undertaken as a statutory requirement under the law and irrespective of whether the amount charged for such service is laid down in a Statute ornot. 3. If the payment is made (or fee charged) for getting a service in return, it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment iscalled. 4. It is also clarified that ST is leviable on any payment, in lieu of any permission or license granted by the Govt or a LocalAuthority.
Allocation of Natural Resources to individual farmers.	Allocation to individual farmers is **specifically exempt** from ST. However, allocation of resources other than individuals shall attract ST.

CS Rahul Harsh

Services in the nature of Change of Land Use, Commercial Building Approval, Utility Services, etc.	Regulation of Land–Use, Construction of Buildings and other Services listed in the 12thSchedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by Government / Local Authority are **exempt** under Notification No. 25/2012 –ST dated20.6.2012.
Whether Service Tax is payable on yearly installments due after 1.4.2016 in respect of Spectrum assigned before 1.4.2016?	ST is payable on such installments as per Rule 7 of POT Rules, 2011. However, there is an exemption for one time charge (payable in full upfront or in installments), for assignment of right to use any natural resource.

Issue	Clarification
	But, this exemption shall not apply to any periodic payment required to be made by the Assignee, such as Spectrum User Charges, License Fee in respect of Spectrum, or monthly payments with respect to the Coal extracted from the Coal Mine or Royalty payable on extracted coal. Hence, these type of charges shall betaxable.
When does the liability to pay ST arise in relation to assignment of right to use natural resource if the payment of Auction Price is made in 10 yearly instalments under deferred payment option for rights assigned after 1.4.2016?	As per Rule 7 of POT Rules, in case of services provided by Government / Local Authority to any Business Entity, the POT shall be **earlier** of – 1. Date on which the Payment (part / full) is due (as mentioned in the Invoice / Bill / Challan / or other document issued by the Govt./ Local Authority demanding duty)or 2. Date of ActualPayment. Hence, if the allottee opts for full payment on upfront, then ST would be payable on the **full value upfront**. If he opts for part upfront and the balance over instalments, then ST would be payable as and when the instalments are due or paid, whichever is **earlier**.
How to determine the date on which payment in respect becomes due for determinationPOT?	The date on which such payment becomes due shall be determined on the basis of Invoice, Bill, Challan, or any other document issued by the Government or a Local Authority demanding such payment.
Whether ST is leviable on Spectrum User Charges and License Fee payable after 1.4.2016 for the year 2015–16?	It is **specifically exempt** as per Notification No.25/2012 dt. 20.06.2012
Whether ST is payable on the interest charged by Govt / Local Authority where the payment for assignment of natural resources is allowed to be made under Deferred PaymentOption?	Rule 6 of Service Tax Rules, 2006 specifically **includes** such interest as part of the value of taxable service.
When and how will the Allottee of the right to use natural resource be entitled to take CENVAT Credit of Service Tax paid for such assignment ofright?	1. CENVAT Credit of the Service Tax paid on one time charges, may be allowed to be taken over 3years. 2. However, CENVAT Credit of the Service Tax paid on the Spectrum User Charges, Licence Fees, Transfer Fees on trading of Spectrum, Royalty in respect of natural resources shall be taken credit in the year in which the Service Tax ispaid.
What are the base documents for availing above CENVATCredit?	ST Payment Challan.

Central Excise – Recent Amendments

<table>
<tr><th>Issue</th><th>Description</th></tr>
<tr><td>Non– Excisable Goods – Reversal of Credit</td><td>Bagasse, Dross and Skimmings of Non–Ferrous Metals or any such By–Product or Waste, which are non–excisable goods and are cleared for a consideration from the Factory, should be treated like Exempted Goods for the purpose of reversal of credit of Input and Input Services, in terms of Rule 6 of CENVAT Credit Rules, 2004.[C.No. 28, dated 15.04.2016]</td></tr>
<tr><td>Extended Due date for TN & Puducherry</td><td>Due Date for payment of Excise Duty for the month of November 2015 is extended to 20.12.2015 for Tamil Nadu and Puducherry. [Notfn. No.25/2015–CE dt. 09.12.15] / [Notfn. No.26/2015 – CE dt. 18.12.15]</td></tr>
<tr><td>Powers to extend due date for Returns [Rule 6[7]]</td><td>CBEC may, by an order extend the period for filing Returns (by Assessees including EOUs) by such period as deemed necessary under the circumstances of special nature to be specified therein. [Notfn. No.25/2015 dt. 09.12.15] [Rule 6(7) & Rule 17(3)Proviso]</td></tr>
<tr><td>Centralised Registration for Jewellery Industry</td><td>1. Nature of Premises /Goods: Every Manufacturing Factory or Premises engaged in the manufacture or production of articles of jewellery including articles of silver jewellery [studded with Diamond, Ruby, Emerald or Sapphire under Chapter Heading 7113 of the I Schedule to the CETA1985]
2. Condition: The Manufacturer of such goods has a Centralised Billing or Accounting System in respect of such specified goods produced by different factories orpremises.
3. Centralised Registration: Such Manufacturer can opt for registering the Factory or Premises, from where such Centralised Billing or Accounting is done, and where the accounts/records showing receipts of Raw Materials and finished Excisable Goods manufactured or received back from Job Workers arekept.
4. Details: Details of all premises [except Job Worker's Premises], from where such goods are removed for domestic clearance should be given by theManufacturer.
5. Separate Registration: Manufacturer can also obtain separate registration for all the Factories / Premises, from where the accounts / records showing receipts of Raw Materials and Finished Goods are kept. [Notfn 05/2016–CX [NT] dt.01.03.2016]</td></tr>
<tr><td>Quarterly Payment of Central Excise Dues</td><td>Following Assessees are eligible for payment of duties on quarterly basis instead of monthly basis, if the Aggregate Value of Clearances of all Excisable Goods for Home Consumption in the Preceding Financial Year, computed as per the relevant Notification, does not exceed the limit specified in the following Table–[Notification No.8/2016 CE dt. 01.03.16]</td></tr>
<tr><td>Annual Return</td><td>1. Every Assessee must file an Annual Return for a particular Financial Year, within 30th November of the next financial year. Earlier, such Return was called as Annual Financial InformationStatement.
2. The above Annual Return should also be filed by the 100% EOUUnit.
[Notification No.8/2016 CE dt. 01.03.16]</td></tr>
<tr><td>Annual Installed Capacity</td><td>The requirement to file the Annual Installed Capacity Statement is removed with effect from 01.04.2016. [Notification No.8/2016 CE dt. 01.03.16]</td></tr>
<tr><td>Revision of Returns [Rule 12[7] & Rule 17[6]]</td><td><table><tr><th>Nature of Assessees</th><th>Time Limit for Revision</th></tr><tr><td>A Manufacturer who has filed the Monthly Return in ER–1 or an SSI who has filed the Quarterly Return on production and removal of goods, within the due date.</td><td>on or before the end of the Calendar Month in which the Original Return is filed</td></tr></table></td></tr>
</table>

Issue	Description	
	An Assessee who has filed the Annual Return within the due date	within 1 month from the date of submission of the Return.
	100% EOU who has filed Monthly Returns, within the due date	on or before the end of the Calendar Month in which the Original Return is filed

CS Rahul Harsh

Note: Where an Assessee submits a Revised Return, the "relevant date" for the purpose of recovery of Central Excise Duty u/s 11A, shall be the date of submission of such Revised Return. **[Notification No.8/2016 CE dt. 01.03.16]**

(1) e-filing of return is mandatory under CentralExcise:

Return	Particulars	Due Date for furnishing
E.R-1	**Monthlyreturnforproductionandremovalofgoods and other relevant particulars and CENVATcredit**: [All assessee exceptSSI]	Within 10 days after theclose of the month to which it relates
E.R-3	**Quarterly Return for Clearance of Goods and CENVAT Credit**: [Filed by SSI unit]	Within 10 days after theclose of the quarter to which it relates.
Form to be notified	**Annual Return to be filed.** Also apply to 100% EOU. As per Rule 9A Annual return is also to be filed under CENVAT Rules (w.e.f 1.4.2016)	30^{th}day of November of the succeeding year.

Revised Return: From 1.4.2016

(a) Anassessee,whohasfiledareturnwithinthedatespecifiedunderthatrule,maysubmitarevised return by the end of the calendar month in which the original return isfiled.

(b) An assessee who has filed Annual Return by the due date mentioned in this rule, may submit a revised return within a period of one month from the date of submission of the said AnnualReturn

(2) Changes from1.3.2016:

(1) Where invoices are digitally signed, the manual attestation of copy of invoice, meant for transporter, is notrequired.

(2) The rate of interest under CENTRAL Excise and Customs is rationalized at 15%p.a.

(3) a duty of excise called Infrastructure Cess, is levied @; (a) 1% on small petrol, LPG, CNC cars,

(b) 2.5% on diesel cars of certain capacity and (c) 4% on other higher engine capacity vehicles and SUVs.

CS Rahul Harsh

Single Registration for Multiple Premises	The Commissioner of Central Excise, may, after ensuring proper accounting of the movement of goods from one premise to other allow **Single Registration** for two or more Premises of the same factory. Conditions to be satisfied for Single Registrationare– • Premises are to be located in a closearea, • Premises are to be within the jurisdiction of a Central ExciseRange, • Process undertaken are interlinked,and • Units should not operate under any of the area–based exemptionnotifications. *[**Note:**Earlier,SingleRegistrationallowedonlywhenifthePremisesofthesameFactory areseparatedbyaPublicRoad/Canal/RailwayLine.]***[Notfn19/2016dt.01.03.16]**
Concessional Rate of Duty – Rules	Central Excise [Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods] Rules, 2016. **[Notfn. No.20/2016 dt. 01.03.16 & 22/2016 dt. 15.03.16]** – Refer **separate** discussion below.
No Attestation on Invoice	If the Duplicate Copy of the Invoice meant for Transporter is **digitally signed**, a hard copy of the Duplicate Copy of the Invoice meant for Transporter shall be used for transport of goods. However, such Duplicate Copy need not be self–attested by the Manufacturer. **[Notification No.8/2016 CE dt. 01.03.16]**
Export of Goods to Bhutan without duty	Export of Goods without duty is permitted to the Hydro Electric Projects in Bhutan in the following locations: Kurichu, Tala, Punatsangechhu – I, Punatsangechhu – II, Mangdechhu and Kholongchhu**[Notfn No.03/2016– CX [N.T] dt. 03.02.2016]**
Changes in Provisions for Rebate of ED	1. The **Indian Market Price** of the Excisable Goods at the time of exportation should not be less than the Amount of Duty Rebate claimed. [**Note:** Earlier, only the words "market price" wasavailable.] **2.** The Claim for Rebate of Duty shall be lodged within the time as mentioned u/s 11B of the Central Excise Act, 1944. **[Notfn No.18/2016 dt.01.03.16]**
Rebate of ED on Inputs [Notfn No.21/2004]	1. The Exporter must file a declaration regarding the Input–OutputRatio. 2. Above Declaration shall be accompanied by a Chartered Engineer's Certificate in respect of correctness of the Input–Output Ratio. A copy of the Standard Input Output Norms [SION] notified by DGFT should be given to the Chartered Engineer before obtaining the Certificate, in respect of goods manufactured orprocessed. 3. The AC / DC may grant permission to the Applicant for manufacture or processing and export of finished goods before commencement of export of such goods on the basis of Certificate issued by the Chartered Engineer and the declaration filed asabove. **[Notfn No.21/2016 dt. 01.03.16]**
Interest in relation to Provisional Assessment	1. **Situation:** The Assessee has– (a) opted for Provisional Assessment in respect of certaingoods. (b) not paid the duty within the original due date applicable for removal of suchgoods. 2. **Consequence:** Assessee shall be liable to pay interest on such duty amount, which is not paid within the duedate. 3. **Period:** From the first day after the due date till the date of actual payment, [irrespective of if suchamountispaidbeforeoraftertheissueoforderforfinalassessment]. 4. **Interest Rate:** Rate specified as per the notification u/s 11AA of the Act. [15%p.a.] **5. Example:**

Event	**Duty Amount**	**Date of Payment**
Provisional Duty for Jan 2016	Rs.	06.02.16
Further Duty paid on above goods	Rs.	15.04.16
Final Order passed on 18.06.16 demanding duty as Rs. 15,000	–	–
Differential Duty paid on	Rs.	30.06.16

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

<table>
<tr><th>Issue</th><th>Description</th></tr>
<tr><td></td><td>Calculation of Interest:
<table>
<tr><th>Duty Liability</th><th>Period of Interest</th></tr>
<tr><td>On Rs. 5,000</td><td>No Interest as it is paid within due date [06.02.16]</td></tr>
<tr><td>On Rs. 9,000</td><td>Interest at 15% p.a. to be paid from 07.02.16 to 15.04.16</td></tr>
<tr><td>On Rs. 1,000</td><td>Interest at 15% p.a. to be paid from 07.02.16 to 30.06.16</td></tr>
</table></td></tr>
<tr><td>Interest for delayed payment of ED</td><td>Interest Rates for delayed payment of Excise Duty is 15% p.a.
[Notfn. No.15/2016 dt. 01.03.16 w.e.f. 01.04.2016]</td></tr>
<tr><td>Interest Rate on goods diverted for Home Consumption</td><td>If the goods cleared for export are diverted for home consumption, then the Exporter must pay the duty thereon along with interest at the rate as per S.11AA. Presently it is 15% p.a. [Previously 24% p.a.] [Notfn. No.16/2016 dt. 01.03.16] [C.No.16 dt 29.02.2016]</td></tr>
<tr><td>Interest Rate for 100% EOU</td><td>If the Specified Goods are not exported within the specified period or extension thereof by the DTA Exporter, the DTA Exporter shall be liable to pay differential duty and interest thereon u/s 11AA. Presently it is at 15% p.a. [Notfn. No.17/2016 dt. 01.03.16]</td></tr>
<tr><td>Conclusion of Penalty Proceedings on Other Persons / Co–Noticees in SCN</td><td>Situations:
(a) If the Assessee had paid the differential duty along with interest and penalty demanded by the CEO for non–fraudulent reasons[Sec.11AC[1][a]]
(b) If the Assessee had paid the differential duty along with Interest and Penalty [=15% of duty] demanded by the CEO within 30 days of the receipt of SCN for fraudulent cases [Sec.11AC[1][d]]
Consequence: All proceedings in respect of penalty against Other Persons (Co–Noticees), in the said proceedings shall also be deemed to beconcluded.
[Notification No.8/2016 CE dt. 01.03.16]</td></tr>
<tr><td>Monetary Limits for Appeals by Department [Instruc–tion dated Dec.17, 2015]</td><td>Monetary Limits for filing appeals by the Department are as under –
<table>
<tr><th>Appellate Forum</th><th>Monetary Limit</th></tr>
<tr><td>CESTAT</td><td>Rs. 10,00,000</td></tr>
<tr><td>High Courts</td><td>Rs. 15,00,000</td></tr>
<tr><td>Supreme Court</td><td>Rs. 25,00,000</td></tr>
</table></td></tr>
</table>

Central Excise [Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods] Rules, 2016 [Notfn. No.20/2016 dt. 01.03.16 & 22/2016 dt. 15.03.16]

Issue	Description
Applicability	**w.e.f.** 16.03.2016, to the whole of India.
Manufacturer covered	(a) Rules are applicable to a Manufacturer who intends to avail of the benefit of a Notification issued u/s 5A(1) of CEA, which grants exemption of duty to excisable goods if used for the specifiedpurpose. (b) An Unregistered Manufacturer including Manufacturers of Exempted Goods or Non–Excisable Goods shall be eligible to avail the benefits of the provisions of these Rules after taking registration under Rule 9 of Central Excise Rules,2002.

CS RAHUL HARSH– FOR MORE UPDATES ON CS DEC 16 EXAMS JOIN -PROFESSIONAL EXPRESS ON WHATSAPP – 9804179372

Duties of Applicant Manufacturer	"**Applicant Manufacturer**" is a **Manufacturer** who intends to receive goods for specified use at concessional ED Rate. The Applicant Manufacturer – (a) shall **provide information in duplicate** in **Form I** to the Jurisdictional AC / DC (who shall forward one copy of the information to the Jurisdictional Range Superintendent of the SupplierManufacturer.) (b) shall **number** the information filed as above in each financialyear. (c) may either provide **separate information** in respect of each of the Supplier Manufacturer of subject goods or provide **combined information** for multiple Supplier Manufacturers with details of each of them inForm–I. (d) shall provide the information to receive subject **goods** in quantities commensurate with expected consumption in the manufacturing process for a period of one year orless. (e) shall execute a **General Bond** with Surety. [**Note:** A Letter of Undertaking is sufficient (instead of Bond) if the Applicant Manufacturer– (i) does not have any SCN issued under u/s 11A(4) and 11A(5) of CEA, or (ii) where no action is proposed under any Notification issued in pursuance of Rule 12CCC of CE Rules, 2002 or Rule 12AAA of CENVAT Credit Rules,2004.

Issue	Description
	(f) shall forward a **copy** of information duly signed by his Authorised Signatory, to the **Supplier Manufacturer** for procuring the subjectgoods. (g) shall , after receiving the subject goods, maintain an **account** indicating the quantity and value of subject goods, the quantity of subject goods consumed for the intended purpose, and the quantity remaining in stock,invoice–wise. (h) shall submit a **Quarterly Return** on the basis of such records in **Form II**, to the AC / DC within $10^{th}$from the end of eachquarter.
Duties of Supplier Manufacturer	(a) The Supplier Manufacturer shall avail the Exemption Benefit on the basis of information received from theBuyer. (b) The Supplier Manufacturer shall maintain record of information received, based on which goods are removed, the removal details, such as Number and Date of Invoice, Description, Quantity and Value of subject goods andAmountofExciseDutypaidatConcessionalRateandretainthesameinhisrecords.
Recovery of Duty	(a) Where the goods cleared by the Supplier Manufacturer on the basis of information provided by an Applicant Manufacturer, are **not** used for the intended purpose, the Applicant Manufacturer shall be liable to pay the Differential Duty along with interest u/s 11A and recovery procedures u/s 11AA shall apply. (b) **Differential Duty =** Original Duty Leviable w/o exemption [–] Duty already paid, at the time of removal fromFactory. (c) If the Applicant Manufacturer is found to be non–existent, the Supplier Manufacturer shall be liable to pay the above amounts and the recovery procedures shallapply. (d) If the subject goods on receipt are found to be **defective or damaged or unsuitable or surplus** to the needs of the Applicant Manufacturer, he may return the subject goods to the Supplier Manufacturer and every such returned goods shall be added to the non–duty paid stock of the SupplierManufacturer. (e) If the subject goods shall be deemed **not to have been used** for the intended purpose if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidableaccidents (i) During transport from the place of procurement to the Applicant Manufacturer's Premises,or (ii) From the Supplier Manufacturer's Premises to the place of procurement or during handling or storage in the Applicant Manufacturer'sPremises.

CS Rahul Harsh

CENVAT Credit Rules 2004

Issue	Description
Definitions	
Capital Goods	1. Capital Goods includes **Wagons** of Sub–Heading 860692 of the I Schedule to CETA 1985, i.e. Wagons of Railway or Tramway, open with non–removable sides of a height > 60cms. 2. Capital Goods must be used in the Factory of the Manufacturer of the Final Products. It may also be in the nature of Equipment or Appliance used in an Office located in theFactory. 3. Capital Goods can also be used **outside** the Factory of the Manufacturer of the Final Products for **pumping of water** for captive use within theFactory. **[Notification No.13/2016 dt. 01.03.16]**
Exempted Service	Exempted Service shall **not** include the following services: 1. Service exported as per Rule 6A of the Service Tax Rules,1994 **2.** Transportation of goods by a vessel from Customs Station in India to a place outside India. **Note:** In the above two cases, even if the service is exempt, there is no need to reverse CENVAT Credit as per Rule 6. **[Notification No.13/2016 dt.01.03.16]**
Inputs	Definition of "Inputs" is amended to include the following – 1. All goods used for pumping of water for captiveuse. 2. All Capital Goods which have a value uptoRs. 10,000 perpiece. **[Notification No.13/2016 dt. 01.03.16]**
Sales Commission = Input Services [Rule 2[l] proviso]	The term "Sales Promotion" as included in the definition of Input Service includes services by way of Sale of Dutiable Goods on Commission basis. Hence, CENVAT Credit shall be available on the Service Tax paid on Sales Commission. **[Notfn No.02/2016 dt. 03.02.16]**

CS Rahul Harsh

<table>
<tr><th>Issue</th><th>Description</th></tr>
<tr><td>Input Service Distributor</td><td>Input Service Distributor can distribute the CENVAT Credit on Input Services to Outsourced Manufacturing Unit also. [Notification No.13/2016 dt. 01.03.16]</td></tr>
<tr><td colspan="2">Eligible CENVAT Credit</td></tr>
<tr><td>NCCD Credit</td><td>CENVAT Credit can be availed on National Calamity Contingent Duty leviable u/s 136 of the Finance Act,2001</td></tr>
<tr><td>CENVAT Credit on Specified Goods
[Rule 3]</td><td>Earlier, there was a restriction that CENVAT Credit shall be allowed only upto 85% of the ACD u/s 3[1] of the Customs Tariff Act, on Ships, Boats and other Floating Structures for breaking up, which are covered under Tariff 89080000 of I Schedule to the CTA. This restriction has now been removed and 100% CENVAT Credit can be availed on such goods. [Notfn 1/2016 dt.01.02.16]</td></tr>
<tr><td>No CENVAT Credit against SBC due</td><td>The eligible CENVAT Credit on duties specified under Rule 3(1) shall not be used to pay the SBC liability leviable on Output Services. [Rule 3(4) Proviso] [Notfn No.02/2016 dt. 03.02.16]</td></tr>
<tr><td>No CENVAT Credit against Infra. Cess</td><td>The eligible CENVAT Credit on duties specified under Rule 3(1) shall not be used to pay the Infrastructure Cessleviable under Clause 159(1) of the Finance Act, 2016. [Rule 3(4) Proviso] [Notfn No.13/2016 dt. 01.03.16]</td></tr>
<tr><td>100% CENVAT Credit in the First year for Capital Goods</td><td>Following Assessees are eligible for CENVAT Credit on Capital Goods in full in the first year of receipt, if the Aggregate Value of Clearances of all Excisable Goods for Home Consumption in the Preceding Financial Year, computed as per the relevant Notification, does not exceed the limit specified in the following Table –
<table>
<tr><th>Nature of Product</th><th>Amount</th></tr>
<tr><td>Manufacture or Production of Articles of Jewellery including Articles of Silver Jewellery [studded with Diamond, Ruby, Emerald or Sapphire under Chapter Heading 7113 of the I Schedule to the CETA 1985], but excluding Other Articles of Silver Jewellery</td><td>≤ Rs. 12 Crores.</td></tr>
<tr><td>Other Assessees / Products</td><td>≤ Rs. 400</td></tr>
</table>
[Notfn No.13/2016 CE dt. 01.03.16]</td></tr>
<tr><td>CENVAT Credit on Jigs, Tools etc.</td><td>1. CENVAT Credit shall also be allowed to a Manufacturer of final products in respect of Jigs, Fixtures, Moulds and Dies or Tools falling under Chapter 82 of I Schedule to the CETA1985.
2. The above credit shall be available even if they are sent to–
∑ another Manufacturer for the production of goodsor
∑ a Job Worker for the production of goods on his behalf, according to hisspecifications.
3. Such credit shall also be allowed even if they are sent by the Manufacturer of final products to the Premises of another Manufacturer or Job Worker without bringing these to his own premises.[NotfnNo.13/2016dt.01.03.16]</td></tr>
<tr><td>Removal from Job Worker Place</td><td>The DC / AC (having jurisdiction over the Factory of Manufacturer of Final Products) may allow the Finished Goods to be cleared from the Job Worker's premises by an order. Such order shall be valid for 3 years. [Note: Earlier, it was valid for only 1 year] [Notfn No.13/2016 dt.01.03.16]</td></tr>
<tr><td>CENVAT Credit of Service Tax paid on Assignment of Rights over natural resources</td><td>1. Nature of Credit: Service Tax paid on the charges (paid or payable) for the service provided by way of assignment of the right to use any natural resource. Such assignment can be by the Government or any otherperson.
2. Calculation of Credit: CENVAT Credit of ST paid in a Financial Year on the assignment of the right to use any natural resource shall be availed evenly over the period of 3years.
3. Effect of Further Assignment: If the Manufacturer or Service Provider further assigns such right to another person against a consideration, in any financial year, then he can avail the Unavailed CENVAT Credit in the same financial year. However, this Credit shall not exceed the ST payable on the consideration charged by him for furtherassignment.
4. Other Charges: CENVAT Credit of ST paid on Annual / Monthly User Charges for such assignment shall be allowed in the same financial year in which they arepaid.
[Notfn No.13/2016 dt. 01.03.16] & [Notfn. No.24/2016 dt. 13.04.16]</td></tr>
<tr><td>Time Limit for Credit availment</td><td>CENVAT Credit of Service Tax paid on services provided by Government / Local Authority / any other person can be availed even after 1 year from the date of eligible document u/r 9.</td></tr>
</table>

Issue	Description
Refund of CENVAT Credit	
Time Limit for Application of Refund of CENVAT Credit u/r 5	The Refund Application in Form A along with the specified documents and enclosures relating to a particular quarter shall be filed within: In case of Manufacturer: Before the expiry of the period as per Sec.11B of CEA, 1944 In case of Service Provider: Before the expiry of 1 year from the date of – (a) Receipt of payment in convertible Forex, if provision of service is complete prior to receipt of suchpayment (b) Issue of invoice, if the payment for the service was received in advance before the date of issue ofinvoice. **[Notfn No.14/2016 dt. 01.03.16]**
Documentation and Returns	
Eligible Document for CENVAT Credit	In case of goods imported through Authorized Courier registered with the PCC / CCC, the Certificate issued by the Appraiser of Customs shall be a valid document for availing CENVAT Credit. **[Notfn No.27/2015 dt.31.12.15]**
Eligible Document for CENVAT Credit	Invoice issued by a Manufacturer or Service Provider shall be the eligible document for claiming CENVAT Credit on – (a) Inputs or Capital Goods cleared from his Factory or Depot or from the premises of the Consignment Agent of the said Manufacturer or from any other premises from where the goods are sold by or on behalf of the said Manufacturer,or **(b)** Inputs or Capital Goods cleared as such. **[Notfn No.13/2016 dt.01.03.16]**
Annual Return [Rule 9A]	1. A Manufacturer / Service Provider, shall submit to the Superintendent an Annual Return (as specified by CBEC) for each financial year, by the 30thNovember of the succeedingyear. 2. Provisions of Rule 12 of Central Excise Rules, 2002, in so far as they relate to Annual Return shall apply to the Annual Return required to be filed under thisRule. **[Notfn No.13/2016 dt. 01.03.16]** **Note:** The requirement to file the Return on Principal Inputs is removed.
Order of utlisation of Credit	Rule 14(2) dealing with the order in which the CENVAT Credit is utilized (for levying penalty) shall be removed w.e.f. 01.04.2016 **[Notfn No.13/2016 dt. 01.03.16]**

Rule 6 –as amended by Notification No.13/2016 dt. 01.03.2016

1. **Basic Principle:** CENVAT Credit on the following categories shall **not** beallowed:
   (a) Quantity of Input – used in or in relation to the manufacture of exempted goods or provision of exempted services. (b) InputService–usedinorinrelationtomanufactureofexemptedgoodsandtheirclearanceuptotheplaceof removal or for provision of exempted services.
2. **No CENVAT Credit:** CENVAT Credit shall **not** be eligible for any Inputs / Input Services in the following cases: (a) A Manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal (b) A Service Provider who exclusively provides ExemptedServices

   Note: The above persons shall not be eligible for credit of any Inputs and Input Services.
3. **Partial CENVAT Credit:** The following categories of persons are eligible for Partial CENVAT Credit–
   (a) Manufacturers who manufacture 2 classes – Non Exempted Goods removed and Exempted Goodsremoved
   (b) Service Providers who provides 2 classes – Non Exempted Services and ExemptedServices
4. **Calculation of Partial CENVAT Credit:** The following are the methods possible for calculation of PartialCENVAT:

Option A [Rule 6[3]]	Option B [Rule 6[3A]]
(a) Avail Full Credit on Inputs and InputServices (b) Pay **6%** of Value of Exempted Goods and **7%** of Value of ExemptedServices (c) **Max. Amount to be paid:** OB of Credit available at the beginning of the period [+] Credit taken during relevant theperiod	Avail Full Credit initially, but apply principles of Provisional Payment and Year End Adjustment for Credit attributable to Exempt Final Products & Services **[See Para B below]** Procedure for Option B to be followed by the Assessee – 1. **Intimation:** Assessee should intimate his option inwritingto the Jurisdictional Superintendent of CentralExcise

Notes: (i) If ED is paid on Exempted Goods, such amount shall be reduced from Total Amount payable as computed under thisoption. (ii) If part of the value of a Taxable Service is exempted on the condition that CENVAT Credit must **not** be availed on Inputs and Input Services, then the Service Provider can avail full credit, and pay **7%** of the value which isexempted. (iii) In case of transportation of goods or passengers by Rail, the amount to be paid shall be 2% of the Value of ExemptedServices. (iv) "Non–Exempted Goods removed" means the Final Products excluding Exempted Goods manufactured and cleared upto the place ofremoval. (v) "Exempted Goods removed" means the Exempted Goods manufacturedandcleareduptotheplaceofremoval. (vi) "Non Exempted Services" means the Output Services excluding ExemptedServices.	**2. Contents ofIntimation:** (a) Name, Address & Registration No. of Service Provider / Manufacturer (b) Date from which this option is exercised or proposed to beexercised. (c) Description of Exempted Goods removed / Exempted Servicesprovided (d) Description of Inputs and Input Services used exclusively in or in relation to manufacture of Exempted Goods removed or for provision of Exempted Servicesprovided. (e) Description of Non–Exempted Goods removed / Non–ExemptedServices (f) Description of Inputs and Input Services used exclusively in or in relation to manufacture of Non–Exempted Goods removed or for provision of Non–Exempted Services provided. (g) CENVAT Credit of Inputs & Input Services lying in Balance on the date of exercising option

B. Calculation of Reversal of Credit u/r 6[3A] [For Option Babove]

1. Provisional Payment [PP] either Monthly / Quarterly – Based on Preceding Financial Year [PFY]Figures

(a) Computation is as under [to be done Monthly/Quarterly]:

Particulars	Called as	Denoted
(a) Total CENVAT Credit on Inputs and Input Services	Total Credit	T
(b) CENVAT Credit attributable to Inputs and Input Services		
(i) Used exclusively in or in relation to manufacture of Exempted Goods removed or for provision of Exempted Services	Ineligible Credit	A
(ii) Used exclusively in or in relation to manufacture of Non–Exempted Goods removed or for provision of Non–Exempted Services	Eligible Credit	B
(c) Credit Left after attribution of Credit **[Note 1]**	Common Credit	C= T–A–B
(i) Common Credit attributable to Exempted Goods removed or for provision of Exempted Services **[Note 2]**	Ineligible Common Credit	D
(ii) Common Credit attributable to Non–Exempted Goods removed or for provision of Non–ExemptedServices	Eligible Common Credit	G= C–D

Note:

1. If the entire CENVAT Credit is fully Ineligible Credit or Eligible Credit, then Common Credit would not arise. 2.

Ineligible Common Credit=

$$\left(\frac{\text{Value of Exempted Goods removed + Value of Exempted Services provided during preceding F.Y.}}{\text{ValueofNon–exempted ofExemptedServicesgoodsRemovedand ExemptedGoodsremoved during}\textbf{PFY} + \text{Value provided andNon exempted Servicesprovided during}\textbf{PFY}}\right) \times \text{Total Common Credit[C]}$$

Note: The figures above are **based on Values for the Preceding Financial Year.** However, if no Final Products were manufactured or no Output Service was provided in the Preceding Financial Year, the Ineligible Common Credit shall be **50% of the Common Credit**.

(b) The Manufacturer / Service Provider shall **provisionally pay** the amounts denoted as [A + D] and **retain the credit** of the amounts denoted as [B + G]. If the payment is not made within due date, then Interest at 15% p.a. on such amount should be paid from the due date till the date ofpayment.

2. Final Credit to be Reversed at the year–end – Based on Current Financial Year [CFY]Figures:

(a) ComputationasmentionedaboveinPt.3[a]shallbedoneonfiguresoftheentireFinancialYear.

(b) Ineligible Common Credit shall be calculated based on same formula as mentioned in Pt.3[a]. However, the figures shall be based on the data of the Current FinancialYear.

3. Final Adjustment /Payment:

(a) The Total Ineligible Credit [as calculated based on the Current Financial year figures] must be compared with the SumofProvisionalIneligibleCredits[ascalculatedeverymonth/quarterbasedonPreviousFinancialYearfigures]

(b) On comparison, there must be an adjustment of Excess / Shortfall as under:–

Situation	Shortfall in Payment = Final Ineligible Credit (FIC) > Provisional Ineligible Credit (PIC)	Excess Payment = FIC < PIC
Course of Action	∑ **Amount to be Paid:** FIC –PIC ∑ **Due Date:** Within **30th June** of the succeedingFY. ∑ **Interest:** 15% p.a. from 30th June till the date of actual payment [if delayed beyond 30th June]	Adjust the excess amount on his own, by taking Credit of such amount.

(c) **Intimation to CEO:** Manufacturer / Service Provider should intimate the fact of such adjustment / payment of shortfall, to the Jurisdictional Excise Superintendent, **within 15 days** from the date of such payment /adjustment.

(d) Contents ofIntimation:

(i) Details of Provisional Credit related to Eligible Credit, Ineligible Credit, Common Eligible Credit and Common Ineligible Credit (accumulated for the entire FinancialYear)

(ii) Details of Final / Actual Credit related to Eligible Credit, Ineligible Credit, Common Eligible Credit and Common Ineligible Credit (calculated on annualbasis)

(iii) Amount short paid along with the date of payment of the amount shortpaid,

(iv) Interest payable and paid, if any, on the amount shortpaid,

(v) Credit taken on account of excess payment, ifany.

4. SpecialCases:

(a) **Banking Company / Financial Institution / NBFC providing services in the form of deposits / loans / advances : In addition to the above options,** they also have an option to pay **50% of CENVAT Credit** availed on Inputs / Input Services in that month. [Earlier, 50% of the credit was the only option. However, w.e.f. 01.04.2016, they also have other options open tothem]

(b) **No Reversal of 50%:** This reversal shall apply independently in respect of each registered unit of a Concern. When such a concern exclusively renders any other service from a Registered Premises, the % of reversals shall not apply. **[Circular No.943/04/2011–CX dt.29.04.2011]**

5. CENVAT Credit on Capital Goods [[Rule6[4]]:

(a) CENVAT credit shall not be allowed on capital goods, if they are used **exclusively** in the manufacture of exempted goods or in providing exempted services for **2 years from the date of commencement of the commercial production or provision ofservices.**

(b) If the Capital Goods are received after the date of commencement of commercial production or provision of services,theperiodoftwoyearsshallbecomputedfromthedateofinstallationofsuchcapitalgoods.

(c) However, CENVAT Credit on Capital Goods can still be availed if the Final Products or Output Services are exempt from the whole of the Excise Duty or Service Tax under any Notification and such exemption is granted based on the value or quantity of clearances made or services provided in a financial year, i.e. SSIs / SSPs can avail CENVAT Credit even if their Final Products / Services areexempt.

C. Common Points for Options A & Babove

1. **Exercise of Option:** If the Manufacturer or the Service Provider, avails any of the above 3 Options [A/B/C], he shall exercise such option for **all** Exempted Goods or **all** Exempted Services provided, and such option shall **not** be withdrawn in the remaining part of the financialyear.

2. **Exemption Notification Compliance:** If any Notification stipulates that exemption shall be granted if CENVAT Credit **not** availed, then the payment under any of the above options shall be deemed to be CENVAT Credit **not availed** for the relevantNotifications.

3. **Payment Mode:** Amount determined under the above Options can be paid by debiting CENVAT Credit or throughPLA.

4. **Due Date ofPayment:**

Nature of Assesee	Frequency	Due Date
General	Monthly	March – Within **31st March** Other Months – Within **5th/6th of Next Month**
Individuals / Proprietory / Partnership Firms availing SSIExemption	Quarterly	Quarter ending on March – Within **31st March** Other Quarters – Within **5th/6th of Next Quarter**

CS Rahul Harsh

5. **Failure to comply with theOptions:**

(a) **Situation:** If the manufacturer or Service Provider has failed to exercise the Option A [under Rule 6[3]] or follow the procedure under Option B [Rule6[3A]],

(b) **Powers of CEO:** The appropriate CEO may allow such manufacturer or service provider to follow the procedure under Option B and pay the amount to be paid for each month using the actual figures of the relevant month. Interest shall also be paid at 15% p.a. from the due date for payment for each month till date ofpayment.

6. **Meaning of "Value" [Notification 28/2012–CE–NT]**:

Particulars	Value
Final Products	Tariff Value / Transaction Value / Retail Sale Price, as applicable
Non–Excisable Goods **[Notfn. 06/2015 w.e.f.01.03.2015]**	Invoice Value / If Invoice Value is not available, such value determined by using reasonable means consistent with Valuation Principles under CEA & CER
Services	Value as per the Service Tax Provisions
Activities which are not Services	Invoice / Agreement / Contract Value If such value is not available, then it shall be determined based on reasonable means consistent with the principles of valuation contained in FA 1994 and Rules.
Composite Rate is opted for Air Travel Agent, Life Insurance Business, Forex Services, Promotion Service for Lottery	Value on which the ST Rate u/s 66B [of FA 1994], read with an Exemption Notification, if any, relating to such Rate, when applied for calculation of ServiceTaxresultsinthesameamountofTaxascalculatedundertheoptionavailed.
Trading of Goods	Higher of – [a] Sale Price **Less** Cost of Goods Sold [excl. Expenses incurred towards their Purchase] **or** [b] 10% of Cost of Goods Sold
Trading of Securities	Higher of [a] Sale Price **Less** Purchase Price **or** [b] 1% of Purchase Price
Banking and Financial Services	Value **shall not** include Value of Services by way of extending Deposits, Loans or Advances, if the Consideration is Interest / Discount

Notes:

- **Principle for calculation of Value of Trading [eg. FIFO, WAC, etc.]:** Method followed by the Concern for its Accounting Purpose as per the Generally Accepted Accounting Principles[GAAP].
- **Treatment of Taxes &Discounts for Trading:** GAAP should be followed. Normally, all Taxes for which set off is available/refundablemaynotbeincluded.Discountsaretobeincluded.**[C.No.943/04/2011–CXdt.29.04.2011]**

7. **Meaning of other Terms [only for the purpose of Rule6]:**

(a) "ExemptedGoods/FinalProducts"includeNon–ExcisableGoodsclearedforaconsiderationfromtheFactory.

(b) "Exempted Services" include an activity, which is excluded from the definition of Service as per Sec.65(44) of the Finance Act,1994.

8. **Exclusions:** Provisions of Rules 6[1], [2], [3] and [4] shall **not** be applicable in case the excisable goods removed without payment of duty in the followingcases–[i.e. Reversal of Credit **not**required.]

A. Export Transactions	(a) Export under Bond without payment of duty under Rule 19 of Central Excise Rules,2002 (b) Export of Services without payment of Service Tax under the Service TaxRules. **Note:** If payment for exports is received after the specified or extended period allowed by the RBI but within 1 year from such period, the Service Provider is entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier under Rule 6[3] based on documentary evidence of the payment so received. **[Notfn No.21/2014–CE [NT]]**
B. Deemed Export	(a) Removal to unit in SEZ / Developer of SEZ [for their Authorised Operations] / EHTP /STP. (b) If Taxable Services are provided, without payment of Service Tax, to a Unit in a SEZ or to a Developer of a SEZ for their authorisedoperations. (c) Removal to 100%EOU. (d) If a Service is provided or agreed to be provided by way of transportation of goods by a Vessel from Customs Station in India to a place outsideIndia.
C. Other Transactions eligible for credit	(a) Supplies to UN / International Organization or for projects funded bythem. (b) Gold / Silver arising in the manufacture of copper or zinc bysmelting. **(c)** Supplied for the use of Foreign Diplomatic Missions or Consular Missions or Career Consular Offices or Diplomatic Agents as per the prescribed conditions. **[Notfn No.27/2010]** (d) Inputs used in manufacture of exempted goods, if such goods are exempt from Customs Duty when imported into India, and are supplied– ∑ against International Competitive Bidding– ∑ to a Power Project from which power supply is tied up through tariff based competitive bidding,or ∑ toaPowerProjectawardedtoaDeveloperthroughtariffbasedcompetitivebidding.

D. CENVAT Credit to Job Worker	∑ IfthedutyliabilityontheFinishedGoodsisbornebythePrincipalManufacturer,theJobWorker shall not pay Excise Duty on suchgoods. ∑ CENVAT Credit on Inputs shall **not** be denied to Job Worker merely because the saidInputsare used in the manufacture of above goods, which are cleared without payment ofduty.

Not Applicable to Input Service Distributor	Input Service Distributor is **not** a Service Provider, and hence, the above facility is not applicable to such Input Service Distributor. **[C. No. 868 / 6 / 2008 – CX dt. 09.05.2008]**

Rule 7: Input Service Distributor(ISD):

INPUT SERVICE DISTRIBUTOR [RULE 2(m)]: Input Service Distributor means an office of the manufacturer or producer of final products or service provider, which receives invoices towards purchases of input services and issues invoice/bill/challan for the purposes of distributing CENVAT Credit on input service to the manufacturer/ service

(a) ISDcandistributetheinputservicecredittо**anoutsourcedmanufacturingunit**alsoinaddition to its own operationalunits.

(b) **Outsourced manufacturing unit**:Includes

- a Job worker who is required to pay duty on the goods manufactured on behalf of Brand owner (Rule 10A of the Central Excise ValuationRules,2000)

- a manufacturer who manufactured goods bearing the brand name of ISD and liable to pay duty on MRPbasis.

(c) **DistributionofInputServicebyISD**:Creditshallbedistributedprorataonthebasisofturnover.

An ISD shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, inter alia, the following conditions:

(i) credit attributable to a particular unit shall be attributed to that unitonly.

(ii) creditattributabletomorethanoneunitshallbeattributedtothoseunitsonlyandnottoallunits.

(iii) credit attributable to all units shall be attributed to all theunits.

(e) Reversal of credit under rule 6 applicable to unit claiming CENVAT credit and not to ISD.

Rule 7A – Distribution of CENVAT Credit on Inputs by Warehouse of Manufacturer [amended by Notfn.13/2016] w.e.f. 01.04.2016

Situation	(a) The Warehouse of a Manufacturer receives Inputs under the cover of documents specified u/r 9 on their Purchases. (b) Such Manufacturer having one or more Factories shall be allowed to take credit on inputs received under the cover of an Invoice issued by suchWarehouse.
Condition	Provisions applicable to the I Stage Dealer or II Stage Dealer, shall apply to such Warehouse.

(6) Rule 7B: Distribution of CENVAT credit on inputs by Warehouse of manufacturer (newly inserted)

(a) Manufacturerswithmultiplemanufacturingunitsshallhavetomaintainacommonwarehousefor inputs and distribute credits to the individual manufacturing units by issuing Invoice. Accordingly, such manufacturing unit shall allowed to take credit on inputs received by thewarehouse.

(b) Procedure applicable to a first stage dealer or a second stage dealer wouldapply

(7) UTILIZATION OF CENVATCREDIT

Duties/Taxes/ Cess	CENVAT credit allowed or not
(1) **(a)** Swachh BharatCess **(b)**Clean Environment Cess(₹ 400 per tonne of coal,lignite and peat produce from1.3.2016) **(c)** Infrastructurecess **(d)** 2%/1% Excise duty as per Notification No. 1/2011 &12/2012.	Not Allowed. Payment to be made in cash.
(2) Basic Excise duty & Service Tax	Allowed. Can be set off against payment of any duty except - (i) NCCD;(ii) Items covered in Point(1).
(3) Other Special duty of Excise	Allowed. Generally, can be set off against special duty
(4) Custom duty	(i) Basic Customs Duty, EC & SHEC – Notallowed. (ii) Additional duty of Customs u/s. 3(1): CENVAT credit on inputs allowed 100% in the same F.Y. On Capital goods 1styear 50% and balance in nextyear. (iii) Additional duty of Customs u/s. 3(5): CENVAT credit on input and capital goods – 100% in thesame F.Y. (only allowed to manufacturer)

CS Rahul Harsh

Equalisation Levy

A new chapter "Equalisation Levy" is introduced by Finance Act 2016, in income tax act, 1961. By introduction of this levy many untaxed transactions of non resident companies will come under its radar. This tax is also called Google Tax, since companies like Google & Facebook are mostly likely to effected by this levy. The concept of this levy is similar to TDS.

It is a tax deducted from any payment made to non residents for any specified transactions. It is applicable from 1st June 2016 @6%.

For example, M/s ABC Ltd. receives specified services of Rs. 10 lakh from a non resident person for their business. M/s ABC Ltd. will have to deduct Equalisation levy @6% i.eRs. 60,000/- from the payment and give only Rs. 9.40 Lacs to the Non Resident.

To whom it is applicable?

- a person resident in india and carrying on business or profession.
- a non resident having permanent establishment in India.

When it is not applicable?

When the non resident who is providing specified transactions have a permanent establishment in India and the specified transaction is effectively connected with the permanent establishment.

When the aggregate amount of consideration for specified transactions does not exceedsRs. 1 Lakh.

When the payment for specified transactions is not for carrying out business or profession in India.

Salient Features of Equalisation levy

- Equalisation levy shall come into force w.e.f 01.6.2016
- Equalisation levy is covered in CHAPTER VIII of Finance Act 2016 ,which extend to whole of India except the State of Jammu and Kashmir.
- Equalisationlevy shall be charged on any specified service received or receivable by a person. "specified service" means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf;
- Equalisation levy shall be charged at the rate of **six per cent.** of the amount of consideration for any specified service received or receivable by a person, **being a non-resident from––**
  (i) a person resident in India and carrying on business or profession; or

  (ii) a non-resident having a permanent establishment in India.

- The equalisationlevy shall not be charged, where––

  (a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;
  *(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, **does not exceed one lakh rupees**; or*
  (c) where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.
- The equalisation levy deducted during any calendar month, shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the saidcalendar month. (i.e if equalisation levy deducted in the month of June 2016 , it shall be paid by 7th July 2016)
- simple interest Interest on delayed payment of equalisation levy at the rate of one per cent. of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.
- Penalty for failure to deduct or pay equalisation levy
  - If Assessee fails to deduct the whole or any part of the equalisationlevy :-A penalty equal to the amount of equalisation levy that he failed to deduct;
  - If Assessee having deducted the equalisation levy, fails to pay such levy :-A penalty of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of equalisation levy that he failed to pay.

- Dis allowance of Expenses u/s 40(a)(ib) if any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy has not been deducted or after deduction, has no been paid on or before the due date specified in sub-section (1) of section 139 (i.e due date of filing of return of Income)
- Equalisation levy, interest and penalty payable should be rounded off nearest multiple of Rs 10
- Equalisation levy shall be paid by remitting it into the Reserve Bank of India or in any branch of the State Bank of India or of any authorised Bank accompanied by an equalisation levy challan.
- Statement of all the specified services chargeable to equalisation levy during any financial year shall be furnished in Form No.1 by any of the following mode :-

  (i) electronically under digital signature; or
  (ii) electronically through electronic verification code.
- The statement in Form No.1 in respect of all the specified services chargeable to equalisation levy during any financial year shall be furnished on or before the 30th June immediately following that financial year.
- Penalty for failure to furnish statement in Form No 1, he shall be liable to pay a penalty of one hundred rupees for each day during which the failure continues.
- No penalty shall be imposable for any failure , if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure and unless the assessee has been given a reasonable opportunity of being heard.
- Where an assessee fails to furnish the statement within the time specified in Form No 1, the Assessing Officer may issue a notice to such person requiring him to furnish and within thirty days from the date of service of the notice statement in Form No 1 shall be furnished by the Assessee.

- Where any levy, interest or penalty is payable in consequence of any order passed , the Assessing Officer shall serve upon the assessee a notice of demand in Form No. 2 specifying the sum so payable
- Appeal against the order of Assessing Officer may be filed with Commissioner of Income-tax (Appeals) . Appeal shall be filed in Form No. 3 within a period of thirty days from the date of receipt of the order of the Assessing Officer and shall be accompanied by a fee of one thousand rupees . Appeal can be in the following manner, namely:-

  (i) electronically under digital signature; or
  (ii) electronically through electronic verification code.
- Appeal to Appellate Tribunal shall be made in Form No.4,. Appeal shall be filed within sixty days from the date on which the order sought to be appealed against is received by the assessee or by the Commissioner of Income-tax, as the case may be. Appeal shall be accompanied by a fee of one thousand rupees.
- Imprisonment for a term which may extend to three years and with fine in case of person makes a false statement.
- Prosecution shall be instituted against any person for any offence with the previous sanction of the Chief Commissioner of Income-tax.

Customs – Latest Amendments

CUSTOMS CIRCULARS AND NOTIFICATIONS

Issue	Description
Classification of Biodiesel	100% Biodiesel (referred to as B100) is classified as an **Oleo chemical** derived from Vegetable Oils or Animal Fats.**[F.No. 528/22/2015–STO (TU) dt 11.12.2015]**
Valuation of CVD payable on Set Top Boxes – RSP basis	Assessment of CVD Payable on Set Top Boxes [STBs], when imported by a Direct to Home [DTH] Broadcasting Service Provider and where STBs are provided free of cost to the Consumers of DTH Service, shall be determined on the basis of Retail Sale Price. [Based on decision of Mumbai Tribunal in **Bharti Telemedia Ltd vs Commissioner of Customs [Import], NhavaSheva [2015–TIOL–1863–CESTAT–Mumbai]**
Interest Free Warehoused Goods	"'Crude', imported and stored in underground rock caverns" is notified as item of Warehoused Goods for which no interest shall be charged u/s **61 of CUA**. **[Notfn 147/2015 dated 15.12.2015]**
Remission of Duty on Volatile Goods	**Goods notified for Sec.70** Remission of Duty on Volatile Goods – 1. Aviation Fuel, Motor Spirit, Mineral Turpentine, Acetone, Methanol, Raw Naptha, Vaporizing Oil, Kerosene, High Speed Diesel Oil, Batching Oil, Diesel Oil, Furnace Oil and Ethylene Dichloride, kept intanks, 2. Wine, Spirit And Beer, kept inCasks, 3. Liquid Helium Gas kept in Containers, and Crude stored inCaverns. **[Notfn3/2016 dated 11.01.2016]**
No Customs Fees for 24 hours Clearance Ports / Airports	Where the working hours in respect of clearance of cargo in Customs Ports or Customs Airports, has been prescribed as **24 hours on all days** for Customs Clearance, no fee is leviable in such locations for the services rendered by the specified category of Customs Officers. **[Notfn 46/2016 dated 01.04.2016]**

Warehousing Licence and Capital Goods Storage Permission to be coterminous	EOU/ EHTP/STP Units are required to obtain Private Bonded Warehousing Licence u/s 58 of CUA (valid for 5 years at a time). Capital Goods used by such Units are permitted to be warehoused for 5 years at a time u/s 61 of CUA. The extension of Warehousing Licence, will also now mean automatic extension of Warehousing Period.**Example:** ∑Warehousing License obtained on 1.1.99, falls due for renewal after initial 5 years period on 1.1.2004. If Cap. Goods have been warehoused on 1.1.2002, extension falls due on 1.1.2007. When Warehousing License u/s 58 becomes due for renewal on 1.1.2004, and is renewed for further 5 years i.e. upto 1.1.2009, extension of Warehousing Period for Capital Goods also be given on 1.1.2004 along with renewal of Warehousing License for a period upto 1.1.2009.**[DGEP/FTP/07/2015dated 15.02.2016]**
Coastal Goods – Exemptions / Provisions	**[Notfn56/2016& 57/2016 dated 27.04.2016]** ∑ Vessels carrying **exclusively Coastal Goods** are exempted from the provisions of Sec.92, 93, 94, 95, 97 and Sec.98(1) of CUA. [by virtue of CG Powers u/s 98A ofCUA] ∑ Sec.30 and 41 of CUA shall apply to vessels carrying exclusively Coastal Goods operating from berths used by vessels carrying imported goods or export goods, as the case may be. The Person–in–Charge of such Vessel or his Agent shall deliver to the Proper Officer, a **Coastal Manifest**, prior to the arrival of the vessel or departure as the case maybe.
Baggage Declaration	∑ **Baggage Rules 2016** – See **separate discussion**below ∑ Domestic Passengers who board International Flights in the domestic leg are **not** required to file the Customs Baggage Declaration Form.**[C.No.8/2016 dated 08.03.2016]**
Drawback Rules	∑ Wheat is also eligible for Drawback Claim. [Earlier restrictionremoved.] ∑ Provisional Drawback Amount as may be specified by the Central Government shall be paid by the Proper Officer. Application by Manufacturer or Exporter is required only if he desires that he may be granted **further drawback** provisionally. **[Rule 7(3)]** ∑ AIR Drawback is payable only if amount >Rs. 500 per Shipment, or ≥ 1% of FOB Value. **[Notfn 109/2015& 110/2015 dated 23.11.2015]**

CS Rahul Harsh

Interest Rate u/s 28AA reduced	**Interest Payable by Assessee**u/s 28AA reduced from 18% p.a. to **15% p.a.**[also applicable for **CEA S.11AA] [Notfn33/2016 dated 01.04.2016]**
Status of Proceedings against Co–Noticees u/s 28 SCN	In case of SCN against Assessee and Other Persons (Co–Noticees), and if proceedings are **deemed to have been concluded** u/s 28(1) or 28(4) by payment of all dues of duty, interest and penalty, then, the Closure of Proceedings will also come into effect against the Other Persons (Co–Noticees) for their acts of commission or omission other than demand of duty. **[C.No.11/2016 dated 15.03.2016]**
Disposal of Hazardous Goods	**Fireworks** are included in the category of **Hazardous Goods** for the purpose of disposal u/s 110(1A). [**Note:** U/s 110 (1A) of CUA, the Central Government may, having regard to theperishableorhazardousnatureofanygoods,depreciationinthevalueofthe goodswith the passage of time, constraints of storage space for the goods or any other relevant considerations, notify the goods or class of goods which shall, as soon as may be after its seizure u/s 110(1), be **disposed** of by the Proper Officer in the prescribed manner.] [**Notfn143/2015 dated15.12.2015]**

Baggage Rules, 2016

<table>
<tr><td></td><td></td></tr>
<tr><td>Definitions [Rule 2]</td><td>
1. Family includes all persons who are residing in the same house and form part of the same domesticestablishment.
2. Infant: A Child not more than 2 years ofage.
3. Resident: A Person holding a Valid Passport issued under the Passports Act, 1967, and normally residing inIndia.
4. Tourist: Tourist means a Person, who–
(a) is not normally Resident inIndia,
(b) enters India for a stay of not more than 6 Months, in the course of any 12 Months period for legitimate non–immigrantpurposes.
5. Personal Effects: Things required for satisfying daily necessities but does not includeJewellery.
</td></tr>
<tr><td>General Free Allowance [Rule 3&4]</td><td>
Following Persons shall be allowed Clearance free of duty articles in his Bonafide Baggage, i.e. Used Personal Effects, Travel Souvenirs and Articles other than those mentioned in Annexure I, if these are carried on the person or in the Accompanied Baggage of the Passenger –
<table>
<tr><th>Persons</th><th>Value upto</th></tr>
<tr><td>(a) Arriving from Nepal, Bhutan or Myanmar–Passenger – (a) being Indian Resident / Foreigner residing in India /Tourist of Indian or Foreign Origin, (b) not being an Infant</td><td>Rs. 15,000</td></tr>
<tr><td>(b) Arriving from any other country</td><td></td></tr>
<tr><td>∑ Passenger – (a) being Indian Resident /Foreigner residing inIndia/ Tourist of Indian Origin, (b) not being anInfant</td><td>Rs. 50,000</td></tr>
<tr><td>∑ Passenger–(a)beingTouristofForeignOrigin,(b)notbeingan Infant</td><td>Rs.15,000</td></tr>
</table>
Note:
(a) If the Passenger is an Infant, only Used Personal Effects shall be allowed dutyfree.
(b) If the passenger is arriving by land from Nepal, Bhutan or Myanmar, only Used Personal Effects shall be allowed dutyfree.
(c) Free Allowance of a Passenger shall not be allowed to be pooled with the same of any other Passenger.
(d) Following are the goods mentioned in Annexure I–
∑ Firearms.
∑ Cartridges of firearmsexceeding 50.
∑ Cigarettesexceeding100.
∑ Cigars exceeding25.
∑Tobacco exceeding 125gms.
∑Alcoholic Liquor or Wines in excess of TwoLitres.
∑Gold /Silver, in any form, other thanOrnaments.
∑Flat Panel (LCD / LED / Plasma)Television.
</td></tr>
</table>

CS Rahul Harsh

Jewellery [Rule 5]	1. **Applicability:** Passenger residing abroad for more than 1 year, on return toIndia. 2. **Jewellery Allowance:** If brought by – (a) Gentleman Passenger – upto 20 grams with a value cap of Rs.50,000, (b) Lady Passenger – upto40grams with a value cap of Rs.1,00,000.

CS Rahul Harsh

Transfer of Residence [Rule 6]	Person –(i) engaged in a profession abroad, or (ii) transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under Rule 3/4, articles in his bonafide baggage to the extent and subject to the conditions and relaxations mentioned in the Appendix.**(See below)**
Currency [Rule 7]	Import & Export of Currency under these rules shall be as per the Provisions of FEM (Export & Import of Currency) Regulations, 2000
Unaccompanied Baggage [Rule 8]	1. **Meaning:** Unaccompanied Baggage refers to Baggage that is not accompanied with the Passenger. Baggage Rules, 2016 apply to Unaccompanied Baggage, except where it is specifically excluded. 2. **Exemption:** Unaccompanied Baggage may arrive **earlier or later** than the Passenger, as under– Baggage **after** Passenger's arrival into India: Unaccompanied Baggage had been in the possession abroad of the passenger and is dispatched **within 1 month** of his arrival in India or within such further period as the AC / DC of Customs may allow. Baggage **before** Passenger's arrival into India: Unaccompanied Baggage may land in India upto 2 months before the arrival of the passenger or within such period, not exceeding 1 year, as the AC / DC of Customs may allow. **[Refer Note]** **Note:** The AC / DC of Customs should be satisfied that the Passenger was prevented from arriving in India within the period of 2 Months due to circumstances beyond his control, such as – (a) Sudden Illness of the Passenger or his FamilyMember, (b) Natural Calamities or DisturbedConditions, (c) Disruption of the Transport or Travel Arrangements in the Country(ies) concerned,or (d) anyotherreasons,whichnecessitatedachangeintheTravelScheduleofthePassenger **Rate on date of Arrival:** Rate of Duty as in force on the date of Arrival of Unaccompanied Baggage would be leviable and not as in force on the date of Advance Information on the Arrival of the
Crew Baggage [Rule 10]	1. **Applicability:** Baggage Rules shall apply in respect of Members of the Crew engaged in a Foreign Going Conveyance, for Importation of their Baggage **at the time of final pay off** on termination of theirengagement. 2. A Member of Crew of a Vessel or an Aircraft other than those referred above, shall be allowed to bring articles like Chocolates, Cheese, Cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs.1,500.

Appendix for Transfer of Residence

Duration of Stay abroad	Articles allowed free of Duty	Conditions
3 to 6 Months	Used Personal & Household Articles, other than Items in Annexure I / II, but including items in Annexure III, upto an aggregate value of Rs.	Indian Passenger
6 Months to 1 Year	Used Personal & Household Articles, other than Items in Annexure I / II, but including items in Annexure III, upto an aggregate value of Rs. 1,00,000.	Indian Passenger
Minimum Stay of 1 year during preceding 2 years	Used Personal & Household Articles, other than Items in Annexure I, but including items in Annexure II / III, upto an aggregate value of Rs. 2,00,000.	The Indian Passenger should not have availed this concession in the preceding 3 years.

Minimum stay ≥ 2 years	Used Personal & Household Articles, other than Items in Annexure I, but including items in Annexure II / III, upto an aggregate value of Rs. 5,00,000.	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence. [See **Note1**] (ii) Total Stay in India on short visit during the 2 preceding years should not exceed 6 months. [See **Note 2**] (iii) Passenger has not availed this concession in the preceding 3years.

CS Rahul Harsh

Note 1: Shortfall of upto 2 months in stay abroad can be condoned by DC /AC of Customs, if the early return is on account of– (i) terminal leave or vacation being availed of by the Passenger, or (ii) any other special circumstances for reasons to be recorded in writing.

Note 2: Principal Commissioner or Commissioner of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.

Goods specified in Annexure II & III are as follows –

Annexure II	Annexure III
1. ColourTelevision. 2. Video Home TheatreSystem. 3. DishWasher. 4. DeepFreezer. 5. Video Camera/ combination of any such Video Camera with one or more of the following goods, namely– (a) Television Receiver, (b) Sound Recording or ReproducingApparatus, (c) Video reproducingapparatus. 6. Cinematographic Films of 35mm andabove. 7. Gold or Silver, in any form, other thanornaments.	1. Video Cassette Recorder /Video Cassette Player /Video Television Receiveror 2. Video Cassette DiskPlayer. 3. Digital Video Discplayer. 4. MusicSystem. 5. Air-Conditioner. 6. MicrowaveOven. 7. Word ProcessingMachine. 8. FaxMachine. 9. Portable PhotocopyingMachine. 10. Washing Machine. 11. Electrical or Liquefied Petroleum Gas CookingRange 12. Personal Computer (DesktopComputer) 13. Laptop Computer (Note bookComputer) 14. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

CASE STUDY FOR DEC 16

SERVICE TAX

Classification and Valuation

Cash Management Service vs Business Auxiliary Service	Services provided by the Bank such as collection of Telephone Bills, collection of Insurance Premium on behalf of the Client Companies are covered under Cash Management Service u/s 12(65) which is excluded from the purview of Service Tax. ST cannot be levied by indirect means by charging it under the head "Business Auxiliary Service". **[Federal Bank Ltd 2016–TIOL–26–SC–ST]**
Cargo Handling vs Manpower Supply Services	If the Contractor supplies manpower for working at the Packing Plant as per the customer's requirement and to ensure that manpower deployed on the work given by Customer's Officers is executed properly, diligently, uninterruptedly and to the satisfaction of the Customer in the Factory Premises of its Works, such services would **not** fall within the definition of "Cargo Handling Services". Two conditions must for Classification as "Cargo Handling Services" – (a) there must be a **Cargo**,and **(b)** the Service Provider must **independently** be involved in loading–unloading or packing–unpacking of the Cargo. **[Sushil& Company2016–TIOL–47–SC–ST]**

- **Haryana Sheet Glass Ltd. (2015)(P&H):**

Facts of the case: Assessee availed CENVAT credit of service tax paid on outward transportation of goods cleared from factory. The assessee was of the view that the transportation of goods from factory to the premises of the petitioner ought to be treated as input service. However, the Revenue disallowed the credit holding that the assessee was not entitled to credit of the service tax towards outgoing freight. The Appellate Tribunal, allowed the appeal of the assessee.

High Court's decision: The High Court relied upon one of its earlier decision in the case of Ambuja Cements Ltd. v. Union of India 2009 (236) ELT 431 (P&H) and upheld the decision of the Tribunal. The High Court held that outward transportation up to the place of removal falls within the expression "input service". The place of removal, in terms of the Circular* of the Board is a question of fact. If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser. In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory

CS Rahul Harsh

- **[Tandus Flooring India Pvt. Ltd (2014)(AAR):**

  ]Marketing and support service provided to foreign company by an Indian company for selling ofproducts of foreign company in India. The place of provision of service will be determined as per Rule 3,since it is not covered through any other rules. **Therefore, the service is not taxable in India, since the placeof provision of service is in non-taxable territory.**

- **Sai Wardha Power Company Ltd (2015)(Bombay)**:

  Excise Officer is bound to grant Form A-2 afterthe due approval obtained from the approval committee and verification of Form A-1 by SEZ officer. Theycannot refuse on the ground of possible evasion of duty. Note: Assessee required to file application in From A-1 and thereafter Department is required to grante certificate in Form A-2 for availing ab intio exemption by SEZ.

- **IRCTC Ltd. (2014)(SC):** Supply of food and beverages on board the trains amounts to sale of goods and not a service transaction. Therefore, liable for VAT only and not service tax. Here, service element is very small and it is incidental to sale. As soon as goods loaded in the trains and at the time of service the ownership of goods is vest with Indian Railways and not with IRCTC.

- **Mcleod Russel (India) Ltd (2015)(cal- tri) :** Security service provided by State Govt. (by creating a force Assam Tea Plantation Security Force –ATPSF) to Tea Industries in disturbed areas to maintain the peace is a sovereign function and coveredunder Negative list therefore service tax shall not be levied on such security fee. It cannot be considered assupport service to business entity.

- **Discuss whether following are liable for service tax or not –**

(i) Activity of packaging of various components as CNG Kits along with instruction manual
(ii) activity of packaging of fertilizer
(iii) supply of study material by a coaching centre to its students in the course of coaching service
(iv) Training provided in field of Natural science and Marine Engineering and short term course such as Fire prevention and fire fighting courses etc.
(v) The bus stand fee or advertisement fee collected by municipality

Answer:
(i) liable for service tax as it does not amounts to manufacture. **[CEV Engineering Pvt. Ltd (2015)(SC)]**
(ii) Since, without packaging fertilizer cannot be sold, therefore, the said activity will fall under the purview of manufacture. Therefore, it falls under Negative List under Service Tax. **[New Era Handling Agency (2015)(SC)]**
(iii) Forms part of value of coaching fee and cannot be considered as sale of goods - since these books are neither priced nor available in the open market and its value are included in the coaching fee. Exemption can be given only for standard text books. **[STC Technologies Pvt. Ltd (2015(Mad- Tri)]**

(iv) considered as Commercial Training or Coaching services and not as vocational training and hence liable for service tax **[Academy of Maritime Education & Training Trust (2014)(Mad-Tri)]**
(v) The bus stand fee or advertisement fee collected by municipality liable for service tax as it cannot be considered as statutory activities. Further, the funds are also goes to the Municipality and not to the Government Treasury. **[Kothamangalam Municipality (2014)(Ker- Tri)]**

- **Bansal Classes 2015 (Raj. HC):** In the given case, assessee provides commercial training and coaching services to students, organizes celebrations for rewarding successful students and to motivate new students, and avails CENVAT credit by utilizing services such as catering, photography and tents. Assessee also hires examination hall, undertakes maintenance and repair of vehicles and incurs travelling expenses for business tours.

The high court observed that providing catering, photography and tent services to students who have finished their coaching classes cannot be termed as output service.
The assessee could not produce any material to show nexus between Repairs, maintenance of motor car and travelling expenses & commercial training or coaching. Hence, CENVAT credit of the same cannot be allowed.

Conclusion: It was held that that the assessee is eligible for CENVAT credit only with respect to service tax paid on renting of examination hall being an immovable property and disallowed the CENVAT credit with respect other activities.

➢ **Rane TRW Steering Systems Ltd. 2015 (Mad. HC): Can the assessee get CENVAT credit on the following cases –**

Items	Held that
Services tax paid on landscaping, gardening and housekeeping services availed to maintain the factory premises in an eco-friendly manner	**Considered as input service under the category of 'modernisation, renovation, repair etc., of the office premises'. Hence, CENVAT is allowed.**

Reason given by the Court
The Court relied on the judgement of Millipore India Pvt. Ltd. The credit rating of a factory depends on how the factory is maintained within as well as outside the factory premises. Further as per environmental laws the assessee is required to maintain the factory in compliance with these laws. The assessee is also required to discharge its corporate social responsibility. Under the circumstances if the manufacturer incurs the cost towards maintenance of factory premises in eco friendlymanner then it is a part of the cost of production and hence CENVAT credit is allowable.

➢ **Vijaya Consultants, Engineers and Consultants 2015 (AP): The Department cannot demand service tax without issuing a proper show cause notice to the assessee merely on the basis of a speaking order and by issuing a letter giving the assessee an opportunity to represent his case.**
Section 73 of the Finance Act, 1994 makes it mandatory for the department to issue Show Cause Notice if any amount is not levied, short levied etc. Since, in the given case no such notice was issued therefore the judgement of Tribunal in favor of the assessee is correct. It is further clarified that the letter cannot be treated as Show Cause Notice as it did not contain (i) the alleged amount of service tax to be paid and (ii) the period thereof. The department must adhere to the procedural requirement of issue of SCN and raising demand of tax. The demand of money in the name of tax by issue of letter is in violation of the very procedure prescribed under the Act.

➢ **Delhi Transport Corporation (2015) (Del.)**: **The service tax burden can be shifted by contractual arrangement to a third party but the assessee cannot ask the department to recover the dues from such third party or cannot ask the department to wait for discharge of his service tax liability until it has collected the tax from such third party.**

Facts of the case: The assessee (service providers) has entered contracts with various agencies for display

CS Rahul Harsh

of advertisements on bus queue shelters and time keeping booths. As per the contract the it is the responsibility of the contractor i.e. advertisers to pay service tax directly. A show cause notice was served upon the assessee raising service tax demand, interest and penalty on the service of display of advertisements rendered by it. It was argued by the assessee that it was under a bonafide belief based on the case of RashtriyaIspat Nigam Limited (SC) that the service tax liability has been transferred though the agreement and therefore it did not file its return and fails to pay service tax.

Held that: The service provided are taxable and there is no dispute that liability to pay service tax is that of the appellant. At the same time, Appellant can rely on RashtriyaIspat Nigam Limited's case regarding transferring of service tax liability by way of a contract. But, this does not discharge the liability towards Revenue. It further observed that appellant is a public sector undertaking and it should be more serious towards compliance of statutory obligations. So far as the Revenue was concerned the appellant was the assessee and was bound to register itself, file returns and comply with all other service tax procedures. **Theservice tax burden can be shifted by contractual arrangement to a third party but the assessee cannotask the department to recover the dues from such third party or cannot ask the department to waitfor discharge of his service tax liability until it has collected the tax from such third party.**

- **GMK Concrete Mixing Pvt. Ltd (2015)(SC):** The assessee was engaged in preparation of ready mix concrete (RMC) along with ancillary and incidental activities like pouring, pumping and laying of concrete and supplied it to customer. The Department was of the view that activities of pouring etc. was a significant part of the transaction and not incidental transaction, **therefore** the activity performed by the assessee not only consists of sale but also of services which should be subjected to service tax. The tribunal held that agreement to supply RMC does not constitute any taxable service but it is sale transaction. The department filed a further appeal before Supreme Court but the same was dismissed by Supreme Court on the ground that The Finance Act, 1994 is a law relating to provision of services not a law relating to commodity taxation. The contract to supply RMC is purely a transaction relating to transfer of property in goods which is not a service. There is a mistake of fact on the part of the department and the law fails. Accordingly, the appeal was dismissed by the Apex Court.

- **Sachin Malhotra (2015)(Uttarakhand High Court): Different between 'hiring of cab' and 'rentingof cab' for the purpose of service tax.**

In case of hiring a car, the owner of the vehicle who may or may not be the driver, offers his services to customer but retains the control and possession of the vehicle with himself. He also needs to obtain the permit issued by the Motor Vehicle Department. Here, the customer is only using the vehicle by travelling in it and he is expected to pay the metered charged which is usually collected on the basis of kilometres. However, in case of rent – a-cab, the hirer is gets the freedom to take the vehicle wherever he wishes. He gets the possession and control of the vehicle and he is only required to inform about the movement from time to time to holder of the license.

<u>**Hence, in view of the above discussions, they are two different transactions for the purpose of service tax.**</u>

EMAIL:csrahulharsh@gmail.com

CENTRAL EXCISE

EOU manufacturing goods out of Indigenous Raw Materials – Valuation Rule under Notification	**Issue:** EOU manufactured goods wholly out of indigenous Raw Materials. However, the Notification states that duty calculated on the said basis would only be payable to the extent of like goods manufactured in India by persons other than 100% EOUs. What is the Valuation Rule? • In such case, Central Excise Valuation is applicable, and not Customs FOBValuation. • In the absence of actual sales in the wholesale market, when goods are captively consumed and not sold, Rule 8 of CE Valuation Rules should be followed to determine what would be the amount equal to the duty of excise leviable on likegoods. • The test to be applied under a Notification is whether the goods are "allowed to be sold" in India. This expressionisdifferentfromtheexpression"sold"anddoes**not**requireanyactualsaleassuch. • The intention is to levy only what is levied by way of Excise Duty on similar goods manufactured in India, on goods produced and sold by 100% EOUs in the DTA if they are produced from Indigenous Raw Materials. **[Nestle India Ltd2015–TIOL–282–SC–CX]**
Exemption Notfn – Own vs Others Brand	Once the goods are sold under **any brand name**, whether that belongs to the Assessee or a Third Party, the goods would be treated as Branded Name. **[Virat Crane Industries Ltd 2015–TIOL–284–SC–CX]**
Manufacture only if new product comes into existence	Assessee receives knitted pile fabrics in grey form from M/s DTE. Job Work undertaken by Assessee on the said fabric is that of washing, dyeing and bleaching, hydro–extraction, tumble dyeing and drying. After taking delivery of these aforesaid Job Work done by Assessee, the said M/s. DTE sent goods to another Processor who undertook remaining process of knitted pile fabric at his end by cutting, sewing and hamming. After that only, that product of Towel came into existence. Job Work by Assessee is not "**manufacture**". **[Hindustan National Glass and Industries Ltd 2016–TIOL–07–SC–CX]**
Valuation of Physician Samples	Assessee sells "Physician Samples" to Distributors at a lower price [for onward free distribution to Physicians] and regular products, i.e. "Trade Packs" at a higher price to the Market. Such Higher Price shall not be considered for valuation of "Physician Samples" to Distributors. **[Sun Pharmaceuticals Inds Ltd &Ors 2016–TIOL–10–SC–CX]**
Time limit for adjudicating Refunds u/s 11BB	Interest u/s 11BB is payable if refund is not paid within 3 months from the date of application. It is obligatory on the part of the Revenue to intimate the Assessee to remove the deficiencies in the application within 2 days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process cannot be carried on beyond three months. It is required to be concluded within 3 months. **[Hamdard [Waqf] Laboratories &Ors 2016–TIOL–21–SC–CX]**
Powers of CESTAT on Classification	Assessee classifies the goods under one heading. Department issues SCN proposing to classify them under a different heading. Tribunal classifies it under a third heading. Held, New Classification cannot be done at the Tribunal stage for the first time. Fresh SCN to the Assessee in this regard is required. **[Precision Rubber Industries Pvt Ltd 2016–TIOL–28–SC–CX]**
Valuation – Post Removal Expenses	**Valuation of Bullet–Proof Vehicles:** Bullet Proofing is done by Job Worker after clearance of goods from Factory. Cost of Bullet Proofing need not be added to arrive at Transaction Value. **[Mahindra & Mahindra Ltd 2016–TIOL–29–SC–CX]**
Nature of Duty Payable for clearance to DTA without permission	Sales by an EOU Assesseein DTA, without requisite permission from the Development Commissioner, are to be assessed to Excise Duty u/s 3[1] of the Act and not under the proviso to the said Section. The issue relates to the significance of the expression "allowed to be sold in India" as appearing in Clause [ii] to the Proviso to Sec.3[1] **[SarlaPerformance Fibers Ltd etc. 2016–TIOL–82–SC–CX]**

C.C.E., RAIGAD v. ISPAT METALLICS INDUSTRIES LTD & ORS [SC] : [Decided on 06/05/2016]

Central Excise Act – procurement of common raw material under a tripartite agreement – transfer of materials between sister concerns – whether the transaction is a sale liable to duty afresh – Held, No. Brief facts :Ispat Industries Limited (hereinafter referred to as the "IIL") and IspatMetallics Industries Ltd. (hereinafter referred to as the "IMIL") are sister concerns having factories adjacent to each other. The principal raw material for manufacture for both these companies is iron ore pellets. The said pellets were purchased from Mandovi Pellets and Essar Steel Limited. These were carried to the factory of IIL. Credit was availed by IIL of the duty paid on the entire quantity so procured. As and when required by the sister company IMIL, pellets were transferred through a conveyor from IIL's plant to IMIL's premises under cover of an invoice and on reversing an amount equal to the Cenvat credit availed on inputs that were so transferred. In addition to such invoices, IIL also raised debit notes on IMIL for recovering actual expenditure incurred by it in relation to the procuring of such iron ore pellets, such as bank commission, interest, etc. The commissioner considered the above transfer as sale and imposed duty while the Tribunal reversed the decision and held that the transaction was a transfer between sister concerns and not a sale. Revenue appealed to the Supreme Court. Decision : Appeal dismissed. Reason : The Tribunal being the last forum of appreciation of facts has held that transfer of iron ore pellets by IIL to IMIL was not a sale of goods but was only a transfer of raw materials procured under the Tripartite Agreement between the two of them and the supplier of the said pellets. This is a pure finding of fact and the appellant has not been able to dislodge this finding of fact. This being the case, the application of the circular of 1.7.2002 becomes important. A reading of this circular makes it clear that a distinction is made between inputs on which credit has been taken which are removed on sale, and those which are removed on transfer. If removed on sale, "transaction value" on the application of Section 4(1) (a) of the valuation rules is to be looked at.

- However, where the goods are entirely transferred to a sister unit, it is reasonable to adopt the value shown in the invoice on the basis of which Cenvat Credit was taken by the assessee i.e. the invoice of the supplier of the pellets to the assessee. As it is clear that the present is a case of transfer and not sale of pellets, no infirmity can be found with the Tribunal's judgment, which only follows the circular dated 1.7.2001. In addition, the Tribunal was also correct in holding that post manufacturing expenses cannot be loaded on to the amount equal to the duty of excise leviable on such goods as this amount would, then, cease to be an amount equal to the duty of excise but would be something more. On both these counts therefore, we find that the Tribunal is justified in its finding on law, which is based on its finding of fact that the present is a case of transfer and not sale. This being the case, it is unnecessary to consider any of the other submissions made by the learned counsel including the point of limitation. The appeals are, accordingly, dismissed.

INDO BURMA PETROLEUM CORPORATION LTD v. COMMISSIONER VAT DELHI & ORS [SC] - Decided on 13/05/2016

Delhi Vat Act- tax on petrol and HSD – tax concession on price hike of petrol & HSD- roll back of price hike- whether assessable value to be reduced by the price hike portion- Held, No.

Brief facts: On 01.06.2006 rates of Petrol and High Speed Diesel were increased by Rs.4/- and Rs.2/- respectively from the midnight of 5/6th June, 2006. This increase in rates would have resulted in ad valorem increase in Value Added Tax (VAT) at the rate of 0.66 paise per litre of Petrol and 0.22 paise per litre of High Speed Diesel. With a view to grant some relief in the price rise to the customers, the Government of National Capital Territory of Delhi issued a Memorandum dated 20.06.2006 to the effect that tax will be calculated and payable on the pre-revised price. Accordingly Delhi Vat act was also amended. On 30.11.2006 there was partial roll back of prices of Petrol and High Speed Diesel which had been enhanced with effect from 06.06.2006. The prices were again rolled back and brought to pre 06.06.2006 status w.e.f. 16.02.2007. The appellant oil companies filed their VAT Returns with the Tax Authorities and continued to deduct amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel from the prevailing sale price and charged/recovered VAT in respect of sale price so reduced by Rs.4/- and Rs.2/- as stated above. The sales tax department took objection to this practice and imposed tax on the deducted rolled back prices. The matters were carried in appeal by the appellants before various authorities and ultimately came before the Supreme Court. Decision: Appeal dismissed. Reason: According to the appellants, the benefit in terms of the proviso in question was to the extent of VAT chargeable and payable in respect of the amount of increase and the benefit so quantified must be made available regardless of any variation or decrease in the rates of Petrol and High Speed Diesel. For example, if the price before the increase in rates is taken to be x and the price were to be x+4 as a result of increase w.e.f. 06.06.2006, the benefit of VAT payable in respect of the element of increase i.e. 4 must be available even if upon partial roll back the price were to be x+1 or upon full roll back the price were to be x itself. If the logic is accepted, upon full roll back, according to the appellants the VAT would be payable on x-4. In our view, the proviso ought to be given normal and natural meaning keeping in mind the context, object and reasons for its enactment and incorporation. The idea was to protect the interest of the consumers by giving exemption in respect of enhanced ad valorem VAT payable on account of increase in prices of diesel and petrol from 06.06.2006. On the element of increase no additional ad valorem VAT was payable and according to the proviso the increased component was not to be part of sale consideration. Consequently VAT was not to be charged in respect of such increased component, as per definition of the term "sale price" which came to be controlled by introduction of the proviso. When there was no increased component and therefore no liability to pay VAT in respect of such increased component, benefit under the proviso ceased to be applicable. The proviso cannot be given operation beyond the element of increase, so much so that even after complete roll back, the benefit in respect of that amount must operate. That certainly was not the intent. The idea was to grant benefit only in respect of that element of VAT respecting increase in rates and not beyond. If that component of increase ceased to be in existence, the benefit of proviso also ceased to be in operation. We, therefore, affirm the view taken by the High Court and the Appellate Authority and are not persuaded to take a different view in the matters. Affirming the judgment of the High Court, these appeals are dismissed without any order as to costs

CCEx. v. TVS Motors Co. Ltd. 2016:

Issue: Whether pre-delivery inspection charges (PDI) charges and after sales service (ASS) charges are to be included in the assessable value?

Decision of the Supreme Court: The Apex Court observed that where manufacturer himself provides the ASS and incurs any expenditure thereon, the same is not deductible from the price charged by him from his buyer. However, where the manufacturer has sold his goods to his dealer and dealer thereafter provides ASS to the customer and incurs expenditure therefore, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. Further, it agreed with the observations of Bombay High Court in case of Tata Motors Ltd. v. UOI 2012 (286) ELT 161 (Bom.) wherein the High Court had struck down Clause No. 7 of Circular No. 643/34/2002 CX dated 1-7-2002 and Circular No. 681/72/2002 CX dated 12-12-2002 (to the extent it affirms the aforesaid circular). It also referred Circular No. 354/81/2000-TRU dated 30.06.2000, wherein it was inferred from the definition of 'transaction value' that if any amount is paid/payable by buyer to/on behalf of assessee on account of factum of sale of goods, then such amount cannot be claimed to be not part of transaction value. In light of above discussion, it held that PDI and free ASS would not be included in assessable value under section 4 of the Central Excise Act, 1944, for the purpose of paying excise duty.

Raghav Industries Ltd v. UOI 2016 (334) ELT 584

Issue: Whether the petitioner can simultaneously claim the duty drawback of the excise duty paid on inputs and service tax paid on input services used in manufacture of goods exported by it as well as rebate of excise duty paid on such finished goods under rule 18 of the Central Excise Rules, 2002 (CER)?

Decision of the High Court: The High Court observed that availing both the benefits would certainly result in double benefit. In the judgment [Spentex Industries Ltd. v. CCEx. 2015 (324) ELT 686 (SC)] relied upon by the petitioner, the benefits of rebate on inputs and on finished goods exported were available to exporter under the provisions of rule 18 of CER whereas in the given case, the benefits claimed by petitioners were covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules 1995 issued under section 75 of Customs Act and other under rule 18 of CERissued under Central Excise Act. Further, as per proviso to rule 3 of the Duty Drawback Rules, petitioner was not entitled to claim both the benefits. The High Court held that when petitioners had availed duty drawback of excise duty paid on inputs and service tax paid on input services used in manufacture of goods exported by petitioner, they were not entitled for rebate under rule 18 of CER as it would result in double benefit.

- **Fitrite Packers (SC)(2015): In order to cover a process under the definition of manufacture at first there must be transformation in the original article and the transformation should bring out a distinctive or different use in the article.**

In the given case, the assessee has purchased duty paid Jumbo rolls of GI paper from the market. Thereafter, it carried out printing as per design and specification of customers with logo and name of product in colourful form.

It was held that GI paper was meant for wrapping and the use thereof did not undergo any change even after printing, as the end use thereof is still same i.e, wrapping/packaging.

However, upon printing of logo and name of the specific product, the end use thereof now confined to only that particular product of the specific company/ customer. This process is not merely a value addition but it transforms a general wrapping paper to special wrapping paper. **Hence, the process performed by the assessee is a manufacturing process.**

- **Otto Bilz (India) Pvt. Ltd (2015)(SC):** In the given case, the assessee is using a foreign brand name known as "BILZ', which is assigned to it by the brand owner with the right to use the brand name in India exclusively. It was held that since the assessee is using the trademark in its own right as its own trademark and therefore it cannot be said that the assessee is using the trademark of another person**. Hence, SSI exemption allowed.**

- **RadheshyamKejriwal (SC): Applicable for Excise, Customs and Service Tax**

(a) adjudication proceedings and criminal proceedings can be launched simultaneously;
(b) decision in adjudication proceedings is not necessary before initiating criminal prosecution;
(c) adjudication proceedings and criminal proceedings are independent in nature to each other and
(d) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution.

(15) Spentex Industries Ltd. (SC)(2015): The word "OR" used in rule 18 of the Central Excise Rules, 2002, means "AND". Therefore, rebate shall be allowed w.r.t both inputs and final products.

Some Significant findings of the Apex Court: Under rule 19 the exporter is not required to pay excise duty either on final product or on raw material. Similarly, under rule 18 it cannot be the intention of the legislations to allow rebate either on final product or on raw material. The intention of the legislature in both the option (i,e in rule 18 and rule 19) is to make export free from any excise duty. If such restrictive meaning

to rule 18 is given, then it would produces an anomalous, invidious discrimination and arbitrary result. It also defeats the very purpose of grant of remission**. Although, as per the general principle the word 'or' is disjunctive and the word 'and' is conjunctive but to manifest the true intent of the legislature these words are to be read vice versa. Therefore, the word 'OR' used in rule 18 of the Central Excise Rules,2002, means 'AND'. The Apex Court also referred the order passed by Revision Authority in the same case, that under rule 18 the word 'or' should not be given a mere literal interpretation otherwise it will leads to various disastrous results.**

EMAIL:csrahulharsh@gmail.com

Hence, under rule 18 rebate shall be allowed w.r.t both inputs and final products to bring it at par with rule 19.

Note: The case of Rajasthan Textile Millls (2013), where in the High Court held that under rule 18 rebate can be claimed either on excisable goods or on raw material, but not on both is overruled by the Apex court.

- **Ceat Limited (2015)(Bombay High Court): No interest under rule 7(4) shall be payable in case of provisional assessment if the differential duty is paid in full before the order of final assessment.**

The assessee had cleared manufactured goods on provisional basis but later on it paid the differential duty on self- calculation basis before final order came. The Department demanded interest on such differential duty paid by the assessee as per rule 7(4) of the Central Excise Rules, 2002 without contending that the duty so paid before final assessment was not correct/ accurate/ properly computed.

The appellant was of the view that interest under rule 7(4) shall be levied only after passing of final order. Since it had paid differential duty before passing of final order and the finalisation of provisional assessment had not resulted into any additional liability, therefore no interest shall be payable as per rule 7(4).

The Court agreed with assessee's view and observed that since the final assessment resulted nothing due and payable to the Government, therefore interest under rule 7(4) shall not be attracted. Further, in absence of any specific provisions in rule 7(4), no interest shall be levied w.r.t differential duty paid prior to finalization of assessment order. Had it been the intention of the legislation the same would have been specifically provided.

- **Chakiat Agencies vs. UOI (2015)(Madras): Appeal filed in time but given to wrong authority mistakenly could not be rejected being time barred by the appellate authority.**

An assessee filed an appeal before commissioner (Appeal) but mistakenly it was given to Adjudicating authority (who had passed the original order). Although the appeal was in time when received by Adjudicating authority but it was not received in time by the appellate authority in its office. The appellate authority had rejected the appeal on the ground of being time barred.

It was observed that, the appeal had been filed in time but reached different wing of the same building and was received by the adjudicating officer. It was the adjudicating authority who ought to have sent it to the appellate wing of the same building before time but he had not done that.

In a similar case, of Radha Vinyl Pvt. Ltd., the appeal had been addressed to wrong officer and department had agreed that the appeal was pending before it and the Court held that the correct course of action should be either they returned it to the appellant to enable him to file before the appropriate authority or should have handed it to the competent authority.

It was evident that the department had not followed the proper course of action. The Court directed the appellate authority to admit the appeal, give opportunity of being heard to the assessee and pass suitable orders.

- **Sanjay Industrial Corporation (2015)(SC): Extended period of limitation cannot be invoked in a situation where the revenue authorities are themselves in doubt regarding dutiability of a product.**

The appellant was engaged in the process of cutting the larger plates into smaller size as per the customer's specification and supplied it (known as profile cutting). No excise duty was paid by the appellant on the ground that the said process did not amount to manufacture. However, the Department issued a show cause notice by invoking extended period of limitation u/s. 11A by treating it was a case of suppression and misrepresentation of facts and demanding excise duty and penalty on the ground that the said process amounts to manufacture.

The appellant stated that there is no suppression or misrepresentation by it. By referring the order of Commissioner, in the case of M/s. Pioneer Profile Industries (Pune) argued that, in that case it was held that although the process of profile cutting amounts to manufacture but penalty could not be levied on the ground that the department itself was in doubt earlier that the said process amounts to manufacture or not.

Accordingly, The Apex court set aside the penalty order and held that since the department was earlier itself in doubt in a similar issue regarding the excisability of the said process, the bonafideness of the appellant could not be doubted if the assessee also had the same belief. Hence, it could not be a case of willfulsuppression of facts.

- **Bharti Airtel Ltd. (2014)(Bombay High Court):**

Issue: Whether the assessee a cellular telephone service provider eligible to get CENVAT credit on excise duty paid on Base Transreceiver Station (BTS) consisting of tower, GSM or Microwave Antennas, Prefabricated building (PFB), isolation transformer, electrical equipments, generator sets, feeder cables etc. under the claim that all such items are part of a "composite system" falling under chapter 85.25 of the CETA, thereby covered under the definition of capital goods rule 2(a) or alternatively fall under rule 2(k) as inputs?

Facts: The department allowed credit on antennas but did not allow credit on other items such as - towers and part thereof and the PFB. The tribunal accept the view expressed by Department.

Decision of the High Court:
(i) The various components of BTS can function independently; therefore it cannot be classified as a composite system under the heading 85.25 to be considered as capital goods. Hence, it will not fall under clause (i) of rule 2(a)(A) of CENVAT Credit Rules.
(ii) Not all components, parts etc. are considered as capital goods under rule 2(a)(A)(iii). Only Components, spares and accessories of the goods specified at (i) and (ii) of rule 2(a)(A) and used for providing output service can be considered as capital goods.
(iii) The argument of appellant that the tower is an accessory of antenna is not acceptable on the ground that antenna could be installed without tower. Further, it also cannot be considered as a part of antenna. A part is necessary to complete a finished product. The antenna itself is a complete product and the towers are structures fastened to the earth on which the antennas are installed and hence, it would be misconceived and absurd to accept the tower as a part of the antenna. Hence, towers and part thereof and the PFB should not fall under the definition of capital goods.
(iv) Even though towers and part thereof received in CKD and SKD conditions, they fall under chapter heading 7308 of the CETA, hence not specified in clause (i) of rule 2(a)(A) of CENVAT Credit Rules to be treated as capital goods.
(v) The other contention that "all goods used for providing output service" is an input as per rule 2(k), thereby credit on the towers etc. must be allowed also shall not be accepted on the ground that towers and PFB are not "goods" since they are immovable structures and non-marketable and non-excisable.
(vi)Hence, PFB, towers and parts thereof should neither be considered as capital goods nor to be considered inputs, for the purpose of allowing CENVAT credit.

Associated Hotels Ltd. (2015)(Gujarat High Court):The Commissioner (Appeal) has the power to remand back (set aside for fresh consideration) a case related to service tax to the adjudicating authority u/s. 85 with proper reason.

The department was of the view that the Commissioner (Appeal) under Excise cannot do so as the said powers was taken away by virtue of amendments in section 35A(3) in the year 2001. Further, for matter related to service tax as per section 85(5) of the Finance Act, 1994, the Commissioner (Appeal) follows the same procedure and exercises the same power as contained in Central Excise Act, 1944, hence the Commissioner (Appeal) does not have the power to remand back a service tax case to the Adjudicating authority as the provisions of Central Excise should be followed.
However, the High Court observed that the provisions of section 85(4) of the Finance Act, 1994 is very broad. It states as under:

> The Commissioner of Central Excise (Appeals) shall hear and determine the appeals and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :
> Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercise and follows in hearing the appeals and making orders under the Central Excise Act, 1944.
Therefore, it has inherent power to remand back a case to the adjudicating authority for proper reasons by virtue of section 85(4). The Court did not accept the argument of department based on section 85(5) on the ground that section 85(5) starts with the word "subject to the provisions of this chapter". Therefore, Section 85(4) overrides section 85(5).
Note: same view was expressed by the Delhi High Court in the case of World Vision (2011).

CUSTOMS

Classification of Customs Duties

Concession in CVD applicable for Imported Goods also	• The Assessee is in the business of tourism, which operates taxis to ferry the tourists from one place to another. Assessee imported Honda Accord Cars and filed Refund Claim on the ground that it was eligible for Concessional Rate of CVD in terms of Notification No.64/93-CE. • Held that that the purpose of Exemption Notification was to extend benefits to the Importers of Saloon Cars to use the said cars for Tourist Taxis. Assessee need not pay anything more than what was payable had the goods been manufactured in India. [Rule in ThermaxCase followed.] **[Aidek Tourism Service Pvt Ltd2015–TIOL–23–SC–CUS]**

Customs Valuation – Technical Services Post Import not includible	The Technical Services Agreement relates only to successfully set up, commission and operate the Plant **after** it has been imported into India. Hence, consideration for the technical services cannot be added to the value of the equipment imported to set up the Plant in India. [**Essar Steel Ltd 2015–TIOL–63–SC–CUS**] [Hindalco Industries Ltd**2015–TIOL–132–SC–CUS**]
Satisfying conditions of ExemptionNotfn.	Exemption is available from CVD on the condition that CENVAT Credit not taken. When the credit under CENVAT Rules itself is not admissible, the question of fulfilling the aforesaid condition does not arise. Exemption from CVD is available. **[SRF Ltd 2015–TIOL–74–SC–CUS]**

Sales from SEZ to DTA – Benefit of Notification	When no Customs Duty is payable on Electrical Energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Sec.30 read with Sec.51 of the SEZ Act. Notfn 25/2010–Cus is ultra vires Sec.30 of SEZ Act which has an overriding effect & is violative of Article 265 of the Constitution of India. Retrospective imposition of Customs Duty is illegal and arbitrary. **[Adani Power Ltd and Another 2015–TIOL–281–SC–CUS]**

Valuation under Customs Law

Demurrage Charges not includible in TransactionValue	Demurrage Charges are admittedly incurred after goods reached at Indian Ports and, therefore, it is a post–importation event. Such Charges, therefore, cannot form part of Transaction Value. **[Essar Steel Ltd 319 ELT 202 (SC),Mangalore Refinery and Petrochemicals Ltd 2015–TIOL–306–SC–CUS]**
No ED on Goods, no CVD onImports	When the product manufactured in India is exempted from Excise Duty, there is no question of payment of additional duty. Ship imported for 'breaking' is not chargeable to Additional Duty. **[Engee Industrial Services Co Ltd &Anr2016–TIOL–40–SC–CUS]**

➢ **Mangalore Refinery & Petrochemicals Ltd. 2015 (323) (SC): In case of import of crude oil the actual quality received in Indian port should be the basis for payment of customs duty and not the quantity shown in the bill of lading. As per the charging Section12 the levy of customs duty is only on goods imported into India. Goods can be said to be imported only if brought to India. Hence, the quantity of goods imported into India will be the quantity that are entered for home consumption.**

Facts of the Case:

(1) On account of ocean loss, the quantity of crude oil actually received into the shore tanks in India was lesser that the quality shown in the bill of lading.

(2) The Department contended that since duty was levied on an ad valorem basis and not on a specific rate, therefore the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty.

(3) The Tribunal also agreed with the Department's view and held that duty should be levied on the on the total payment made by the assessee irrespective of the quantity received.

Significance observation made by the Apex court:

(i) **In case of import of crude oil the actual quality received in Indian port should be the basis for payment of customs duty and not the quantity shown in the bill of lading. As per the charging Section12 the levy of customs duty is only on goods imported into India. Goods can be said to be imported only if brought to India. Hence, the quantity of goods imported into India will be the quantity that are entered for home consumption.** Import duty can belevied only on imported goods and till that is done, there is no charge to tax. The chargeableevent in the case of imported goods is "import". The quantity of goods stated in a bill of ladingreflects the purchase transaction and not the quantity of goods at the time and place of importation.

(ii) As per sections 13 and 23 where imported goods are lost, pilfered or destroyed, no import duty is leviable. This clears that at the stage when goods are received by the importer is to be looked at for the purposes of valuation.

(iii) Customs duty whether at a specific rate or ad valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. Whether customs duty is at a specific rate or is ad valorem does not make the least difference to the statutory scheme.

(iv) Hence, in the given case, the actual quantity received in Indian port should be the basis for payment of customs duty.

➢ **Aidek Tourism Services Pvt. Ltd. (2015)(SC):** Additional Duty of Custom / CVD u/s. 3(1) shall not be payable if the excise duty on a like article is exempted if produced or manufactured in India.

The Apex Court held that, the rate of CVD u/s 3(1) of CETA, 1975 shall be the rate that would be payable under the Central Excise Act, 1944 on a like article. Therefore, if any notification is issued providing exemption or remission of excise duty in relation to a like article if produced or manufactured in India, then the importer is liable to pay concessional or reduced or nil rate of CVD on such imported goods.

- **Parimal Ray (2015) (Calcutta High Court):** The time limit of refund application u/s. 27 of the Customs shall be applicable only on duty or interest excess paid and not money (not in the nature of duty or interest) wrongly paid.

In the given case the petitioner paid a large amount of customs duty due to wrong classification on import of tunnel boring machines which were otherwise fully exempted from custom duty. The petitioner filed a writ petition claiming the refund of the amount so paid after expiry of more than 3 years. The refund claim was rejected on the ground that no application has been filed within one year of payment of duty u/s. 27.

The High Court observed that, section 27 applicable only in case of excess amount being in the nature of duty or interest is paid but in the given case the amount so paid was not a duty/ interest as the duty was fully exempted. Therefore, the amount so paid to Government is rightly called money paid mistakenly by one person to another which the other person is under obligation to repay u/s. 72 of the Indian Contract Act, 1872. Hence, when a wrong is continuing there is no limitation for instituting a suit complaining about it.

Significant Changes in Foreign TradePolicy

Status Holder Criteria	All exporters of goods, services and technology having an import export code (IEC) number shall be eligible for recognition as a Status Holder. Status recognition will depend on export performance. An applicant shall be categorized as status holder on achieving export performance during the **current and previous 3 financial years** (for Gems &Jewellery Sector the performance during the current and previous 2 financial years shall be considered for recognition as Status Holder). The export performance will be counted on the basis of FOB of export earning in free foreign exchange. **Effect of this Notification:** The criteria for recognition as Status Holder has been changed w.e.f 01.04.2016 to the exports in the current and previous 3 financial years from the existing criteria of current and previous 2 financial years. For the Gems and Jewellery sectors, the existing criteria of export performance in the current and previous two years shall continue. **(Notification No.04/2015-2020)**
Definition of "E–Commerce" for MEIS	"E–Commerce" means buying and selling of goods and services, including digital products, conducted over digital electronic network. For the purposes of MEIS, e–commerce shall mean the exports of goods hosted on a website accessible through the internet to the purchaser. While the dispatch of goods shall be made through courier or postal mode, as mentioned under MEIS, the payment for such goods shall be done through International credit / debit cards and as per the RBICirculars. **Effect of this Notification:** The definition of E–commerce is introduced in Chapter 9 of the FTP (2015 – 2020) **(Notification No.02/2015–2020)**
EPCG Scheme	Authorization under EPCG Scheme shall not be issued for import of any Capital Goods for generation/transmission of power (including Captive plants and Power Generator Sets of any kind) for Supply of power (energy) in their ownunit. **Effect of this Notification:** Import of Capital Goods is not permitted under EPCG Scheme for generation/transmission of power. **(Notification No.35/2015–2020)**

All you should know about Goods and Services Tax

Recently, on June 14, 2016, the Government has put the Draft Model GST Law on public domain after getting in-principle nod from the Empowered Committee of State Finance Ministers, in a way, indicating that the GST might mark its advent from April 1, 2017. The Draft Model GST Law is a model, which the Central

Government and each of the State Governments would use to draft their respective Central and State GST Acts. Further, a Draft of the Integrated GST (IGST) Act, 2016, which will govern levy of GST on inter-State supplies by the Central Government, is also issued. The Draft Model GST Law provides an insight on the governing provisions regarding levy and collection of GST. It also states that the Act shall be referred as the Central/ State Goods and Services Tax Act, 2016. The Draft Model GST Law consists of 162 clauses divided into 25 Chapters along with 4 Schedules and Rules as to Valuation under GST. Further, the Draft IGST Act consists of 33 clauses divided into 11 Chapters.

#UPDATE: AS ON 8TH OF SEP, 2016 ; President of India gave his Assent to the GST BILL and now GST is an ACT which is proposed to be applicable to whole of India W.E.F 1st April, 2017.

Key Highlights of the Draft Model GST Law are as follows:

Levy of GST

• Levy and collection of Central GST ("CGST")/ State GST ("SGST")and Integrated GST ("IGST") 1. On Intra-State supplies of goods and/ or services: CGST & SGST shall be levied by the Central and State Government respectively, at the rate to be prescribed; 2. On Inter-State supplies of goods and/ or services: IGST shall be levied by the Central Government at the rate to be prescribed. • Reverse charge basis: Notification may be issued for providing specific categories of supply of goods and/or services, on which, GST is payable by the person receiving such goods and/ or services, on reverse charge basis. • Composition levy: A registered taxable person, whose aggregate turnover in a financial year does not exceed Rs. 50 lakhs, shall be provided an option to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 1% of the turnover during the year, subject to certain conditions.

Taxable person

• A person is liable to pay tax if his aggregate turnover in a financial year exceeds Rs. 10 lakhs. However, a person conducting business in any of the North Eastern States including Sikkim, is required to pay tax if his aggregate turnover exceeds Rs. 5 lakhs. • The Central Government, a State Government or any Local Authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act, like activities of issuance of passport, visa, birth certificate etc.

Registration

• Threshold limit: A supplier is required to get registered under the GST if his aggregate turnover in a Financial Year exceeds Rs. 9 lakhs and Rs. 4 Lakhs where business is conducted in any of the North Eastern States including Sikkim. No threshold exemption for persons making Inter-State supply and those who are required to pay GST under reverse charge mechanism. • Place of registration: A supplier has to take registration in the State from where taxable goods and/or services are supplied.

Taxable Event

The taxable event under the GST regime shall be supply of goods and/ or services. Thus, meaning of the term 'supply' plays a crucial role since under GST, tax would be levied on supply of goods & services and the present concepts of manufacture/ rendering of services/ sale would lose its relevance.

Point of taxation

• Time of supply of goods: CGST/SGST shall be payable at the earliest of the following: a) Date on which the goods are removed for supply to the recipient (in case of movable goods); or b) Date on which the goods are made available to the recipient (in case of immovable goods); or c) Date of issuing invoice by supplier; or d) Date of receipt of payment by supplier, or e) Date on which recipient shows the receipt of the goods in his books of account

Place of supply of goods and/ or services

Since, the proposed GST framework will work on the principle of destination based consumption tax, place of supply rules plays an important role to build up a mechanism to determine taxable jurisdictions for the smooth implementation of GST. It becomes more important in case of Inter-State transactions and e-commerce transactions. Thus, the relevant provisions have been prescribed for determining the place of supply of goods and/ or services under Chapter IV of the Draft IGST Act.

Determination of the Value of supply of goods and services

In this regard, Draft GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016, has been prescribed, which shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act. Methods prescribed for determination of value of supply are as follows:

a) Transaction Value Method: The value of goods and/or services shall be the transaction value i.e. the value determined in monetary terms.

b) Comparison Method: Where value of supply cannot be determined under the Transaction Value Method, the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.

c) Computed Value Method: Where value cannot be determined under the Comparison method, it shall be based on a computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges, if any, for design & brand and amount towards profit & general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.

d) Residual Method: Where the value cannot be determined under the Computed Value method, the value shall be determined using reasonable means consistent with the principles and general provisions of the Valuation Rules. e) Valuation in certain cases: Provisions prescribed in relation to the valuation in the case of Pure Agent (such as exclusion of the expenditure or costs incurred by the service provider as a pure agent of the recipient of service subject to the fulfilment of the conditions); Money Changer (such as for a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency, etc.) are also prescribed under the Draft Valuation Rules.

Payment of tax, interest, penalty and other amounts Every deposit towards tax, interest, penalty, fee or any other amount by a taxable person shall be made by internet banking or by using credit/debit cards or National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or by any other mode. The amount shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

CS Rahul Harsh

Returns

Every registered taxable person shall be required to furnish the following returns:

• Monthly Return: Every registered taxable person shall have to file a monthly return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within 20 days after the end of such month.

• Return for Composition Scheme: A registered taxable person paying tax under composition scheme shall have to furnish a return for each quarter or part thereof, electronically, within 18 days after the end of such quarter. • TDS Return: Every registered taxable person who is required to deduct tax at source shall furnish a return, electronically, within 10 days after the end of month in which deduction is made.

• Return for Input Service Distributor: Every Input Service Distributor shall file return for every calendar month or part thereof, electronically, within 13 days after the end of such month. First Return: Every registered taxable person shall have to furnish the first return from the date on which he became liable to registration till the end of the month in which the registration has been granted.

• Annual return: Every registered taxable person except certain specified person shall have to furnish an annual return for every financial year electronically on or before the 31st day of December following the end of such financial year.

• Final return: Every registered taxable person who applies for cancellation of registration shall have to furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in a prescribed form.

E-commerce –

Tax at source to be deducted on online sales of goods and/or services Every E-commerce operator who is directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection therewith (like Amazon, Flipkart etc.), but shall not include persons engaged in supply of such goods and/or services on their own behalf, shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and/or services made through it, calculated at such rate as may be notified.

GST compliance rating score

Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of the GST Act. The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain, which in return, shall enhance the reputation of the taxable person

***Full text of Draft Model GST Law is available at: //finmin.nic.in/reports/ModelGSTLaw_draft.pdf**

For more such Updates and Discussions

JOIN "WhatsApp Group Professional Express - 9804179372" for CS DEC 16 – Exams

- **csrahulharsh@gmail.com**
- **csrahulharsh.blogspot.com**
- **Facebook.com/csrahulharsh**

CS Rahul Harsh

EMAIL:csrahulharsh@gmail.com

BEST OF LUCK!

CS Rahul Harsh