PART II - SERVICE TAX
EXECUTIVE SUMMARY

2.1 Introduction

In his speech before the house the Honorable Finance Minister described ***"GST" as a "GAME" changing reform***. In his words GST will put in place the "State-of-the-Art" indirect tax system by 1-April-2016

In his budget speech he acknowledged that introduction of GST was eagerly awaited by Trade and Industry. To facilitate a smooth transition to levy of tax on services by both the Centre and the States, he proposed to increase the present rate of service tax plus education cesses from 12.36% to a consolidated rate of 14%.

2.2.1 Enhancement in rate of Service Tax

The Service Tax rate is being increased from 12% plus Education Cesses to **14%**.The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, effective increase in Service Tax rate will be from existing rate of 12.36% (inclusive of cesses) to 14%.

The increase in the rate of service tax seems to be in line with the objective to introduction of GST. In the GST era it is expected that the rate of tax on goods and services is going to be higher than the current rates

However the issue of utilization of CENVAT Credit balance of Primary and Secondary education Cess as on the date to be notified does not find any mentioned in the proposals. This is because CENVAT Credit in respect of Cess cannot be utilised for payment of Service Tax

2.2.2 Enabling provision "Swachh Bharat Cess"

An enabling provision is being made to empower the Central Government to impose a "Swachh Bharat Cess" **on all or any** of the taxable services at a rate of 2% **on the value of such taxable services** with the objective of financing and promoting Swachh Bharat initiatives

However, the current proposals do not mention any provision for availment of CENVAT Credit in respect of such Cess

As per the speech of the honorable FM this is just an enabling provision. The excerpts of the FM's speech are reproduced here under:

*"It is also proposed to have an enabling provision to levy Swachh Bharat Cess at a rate of 2% or less on all or certain services **if need arises**"*

[The above will come into effect from date to be notified]

2.2.3 Threshold Exemption Limit

The basic threshold exemption limit of Rs 10 Lakhs remains unchanged

2.3 Legislative changes relating to the negative list [Sec.66D]

Section 66B of the Finance Act 1994 creates a charge on of service tax on the value of services, other than those specified in the negative list

The services enumerated in the negative list therefore go out of the purview of the charging section. The negative list is provided in section 66D of the Act and comprises of various services. Basically the list includes services provided by the government department, essential services, etc

With a view to widen the tax base this budget has proposed to remove certain services from the negative list of services

2.3.1 Admission to entertainment event or amusement facility [Sec. 66D (j)]

As per entry 62 of the State List of the seventh schedule to the Constitution of India, taxes on luxury including entertainment and amusement are within the exclusive power of the States. Accordingly, these services were included in the negative list at the time of introduction of the new regime

The above entry relating to events and amusement facilities is proposed to be deleted. Certain services comprised in this entry have been kept out of the service net (fully or partially) by way of exemption. The proposals are tabulated as under:-

Description of Service	Nature of withdrawal of exemption	Proposal to exempt some of the services as under
Access to Amusement facility	Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and	Exemptions[1] shall continue for:- Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo

	theme parks	
Admission to events	Service by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event will be liable to service tax	Exemptions[1] shall continue for:- ❖ award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than Rs 500 per person ❖ If the event is a recognized sporting event[2] ❖ If the nature of event is exhibition of cinematographic film, circus, dance, or theatrical performance including drama

[1] Amendment Notification No. 6/2015-ST, dated 01-03-2015

[2] "Recognised sporting event means any sporting event –

(i) organised by a recognized sports body where the participating team or;

(ii) individual represent any district, state, zone or country

		or ballet

Although the right to tax admission or entry to events rests falls under the State List which is a subject matter of Entertainment Tax the Finance Bill 2015 seems to have gone beyond its constitutional powers

[The above will come into effect on enactment of the Bill]

2.3.2 Carrying out any process for production of alcoholic liquor [Sec. 66D (f)]

The negative list entry at Section 66D (f) pertains to process amounting to manufacture or production of goods. Currently, such activity is not chargeable to Service Tax

The term "**process amounting to manufacture or production of goods**" is defined under section 65B (40) of the Finance Act 1994. It inter alia includes any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and narcotic drugs and narcotics on which on which duties are leviable under any State Act

It is proposed to amend the entry in the negative list so as to exclude there from "alcoholic liquors for human consumption". Consequently, the above words have been also omitted from the definition of "process amounting to manufacture or production of goods" in section 65B(40) of the Act

Under the Business Auxiliary services (under the pre-negative list era) levy of Service Tax on production of alcoholic liquors has been a litigated[3] issue. Initially the negative list era kept this activity out of the tax net.

[3] Som Distilleries Pvt Ltd Vs Union of India [(2009) TIOL 292 (MP)

However, the government seems to have now opened this area for levy of Service Tax (perhaps a move towards GST regime)

Exemption in respect of Contract Manufacturing of Alcoholic Liquors

The mega exemption notification (entry 30(c) of Notification No. 25/2012-ST, dated 20-06-2012) relating to exemption for job workers/ intermediate production has also been amended[4] to exclude job workers producing alcoholic liquors for human consumption

[The above will come into effect on enactment of the Bill]

[4] Amendment Notification No. 6/2015-ST, dated 01-03-2015

2.3.3 Any service (except those in the negative list) provided by the Government now taxable [Sec. 66D (a)]

Currently, services provided by the Government or local authority *except certain services enumerated in 66D(a)(i) to (iii) and support services*[5] *[Section 66D(a)(iv)] provided to business entities* are covered by the negative list.

The last clause in the list of government services that are liable for payment of service tax is restricted to "support services". With a view to widen the tax base it is proposed to extend the levy to "any" services provided to business entity. This amendment is set to garner huge revenues to the government

Further, with a view to avoid any further confusion and interpretational issues the term "government" is being defined[6]. The proposed definition is reproduced here under:-

"(26A) "Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include 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[7] *or the rules made there under"*

[The above will come into effect on enactment of the Bill]

2.4 Review of existing Exemptions

[5] Section 65B(49) defines the term "Support services"
[6] Proposed insertion of Section 65B(26A) of the Finance Act 1994
[7] Form of Accounts to be maintained by the Union and the State

2.4.1 Specified constructions services provided to Government

Currently, specified construction services for non-business purpose which are provided to government[8] are exempted under the mega exemption notification[9]. The existing and proposed changes are tabulated here under:

Nature of Services covered under the exemption	Existing Scope of exemption	Proposed Scope of exemption[10]
Services in the nature of Construction, errection, commissioning, installation, completion, fitting out, repairs maintenance and renovation of -	) Works meant for the use of non-business purposes) Historical monuments and sites) Structure meant for the use of educational, clinical or cultural establishment) Canal, dam or irrigation works) Pipe line, conduit or plant for water supply,	) Historical monuments and sites) Canal, dam or other irrigation works) Pipe line, conduit or plant for water supply, treatment or sewerage

[8] Government, local authority or governmental authority
[9] Notification No 25/2012-ST, dated 20-06-2012 entry serial no. 12
[10] Notification No 6/2015-ST, dated 01-03-2015 giving effect to above proposal

	treatment or sewerage) Residential complex for self use	

[The above will come into effect from 01-04-2015]

2.4.2 Exemption relating to constructions services in respect of specified original works

Currently, mega exemption notification inter alia exempts specified construction services of original works pertaining to an airport or port[11]. This exemption has been withdrawn[12]. The other exemptions covered under the same entry applicable which inter alia include railways, monorail and metro rail shall still continue

[The above will come into effect from 01-04-2015]

2.4.3 Services of a performing artists

Currently, the mega exemption notification[13] grants exemption to services provided by performing artists in folk or classical forms of music, dance, and theatre (excluding services by such artists as brand ambassadors)

The current exemption has been restricted[14] to cases where the amount charged by such artists for the performance is up to Rs.1,00,000/-

[The above will come into effect from 01-04-2015]

2.4.4 Exemption relating to transportation of food stuff

[11] Notification 25/2012-ST, dated 20-06-2012 Serial No 14
[12] Notification No 6/2015-ST, dated 01-03-2015
[13] Notification No 25/2012-ST, dated 20-06-2012 Serial No. 16
[14] Amendment Notification No. 6/2015-ST, dated 20-06-2012

Currently, transportation of foodstuff by rail, vessel and road are exempted[15]. The scope of this exemption is proposed to be narrowed as under:-

The relevant exiting provisions and proposals[16] are tabulated here under:-

Existing provisions	Proposals
Transport services in respect of foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil excluding alcoholic beverages	Transport services in respect of milk, salt and food grain including flours, pulses and rice

[The above will come into effect from 01-04-2015]

2.4.5 Exemption relating to Agents/ Intermediary Services

The taxability of mutual fund agents and lottery agents was a matter of wide scale litigation. History has witnessed a lot of litigations and amendments in the area of Service tax liability in respect of services provided by financial intermediaries/ agents.

It has been held by the Honorable Sikkim High Court[17] that the activity of promotions, organising, reselling or any other manner assisting in arranging of lottery tickets of the State Lotteries does not establish the relationship of a principal or an agent but rather that of a buyer and a seller and, on principal to principal basis in view of the nature of the transaction consisting of bulk purchases of lottery tickets on full payment on a discounted price as a natural business transaction. For the above reason it

[15] Notification No. 25/2012-ST, dated 20-06-2012 Serial No. 20/21
[16] Amendment Notification No. 6/2015-ST, dated 20-06-2012
[17] Future Gaming Solutions India P Ltd Vs Union of India [WP(C) No 32 of 2012]

was concluded by the honorable court that transactions in lottery tickets is not liable for payment of service tax

The introduction of negative list regime provided a booster dose for the mutual fund industry and lottery agents as the services of these agents were exempted under the mega exemption notification[18]

The Finance Bill 2015 has withdrawn this exemption[19] in respect of following intermediary services provider:

1. Services of mutual fund agents
2. Distributor to a mutual fund or an AMC
3. Lottery Agent services to a distributor

However, service tax on these services shall be levied on reverse charge basis. Amendment to RCM provisions as per Notification 30/2012 have been simultaneously carried out[20]. Accordingly, service tax in respect of these agents shall be payable by the mutual fund or the AMC. This amendment takes us back to the position that existed during the pre-negative list era.

[The above will come into effect from 01-04-2015]

2.4.6 Exemption regarding payments to overseas commission agent

Originally, intermediary of goods were liable for payment of service tax under the POPS[21] Rules based on the place of recipient of services (Rule-3).

The Finance Act 2014 (Effective 01-10-2014) amended the POPS Rules to cover intermediaries of both goods and services on the same footing by providing that intermediaries of goods as well as services shall be governed by provisions of Rule 9(c) of POP Rules and

[18] Notification No. 25/2012-ST, dated 20-06-2012 Serial No. 29 entry (c), (d) and (e)
[19] Amendment Notification No. 6/2015-ST, dated 01-03-2015 entry no (viii)
[20] Amendment Notification No 7/2015-ST, dated 01-03-2015
[21] Place of provision of Services Rules 2012

be liable for payment of service tax based on the location of service provider

With the above position in law payment of export commission to overseas agent was out of the Service tax net from 01-10-2014.

Accordingly, the specific exemption granted under Notification No. 42/2012-ST, dated 29-06-2012 became redundant. Hence, this notification has been rescinded with immediate effect[22]

2.5 Introduction of new exemptions

2.5.1 Transportation of patients by ambulance operators

Currently, only those healthcare services which are provided by clinical establishments, authorized medical practitioner or para-medic are exempt. Accordingly, ambulance services provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax.

It is proposed to expand the scope of this exemption to ensure that ambulance services provided by any person gets covered under this exemption

2.5.2 Life Insurance service

Life insurance service provided by way of Varishtha Pension Bima Yojna is being exempted. It appears that this exemption is introduced keeping in mind that the beneficiaries of this scheme are senior citizens

2.5.3 Common Effluent Treatment Plant

Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted. In the backdrop of “SWACHH BHARAT” campaign this

[22] Rescinding Notification No. 3/2015-ST, dated 01-03-2015

exemption is aimed at services connected with betterment of environment.

2.5.4 Preservation of fruits and vegetables

Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted perhaps with an intention to incentivize this sector.

2.5.5 Admission to certain amusement facilities

Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted, and the same services provided by the government or local authorities are covered under negative list.

These amendments are consequential to removal of entry from the negative list

2.5.6 Services relating to exhibition of film/ movie

❖ **Modus operandi of film distribution**

Normal business practice in the film industry is that the producer of the film, who is the owner of the IPR in the film, temporarily transfers these rights to a distributor. The distributor in turn enters into an agreement with the theatre owner/ the exhibitor for screening of the film

❖ **Taxability of transactions between distributor & exhibitor**

Further, the distributor may temporarily transfer the IPR to the exhibitor of the film for screening in the cinema hall. Under the negative list regime such transfer is specifically exempted under entry 15 of Notification No. 25/2012-ST. This position was also clarified[23] by the CBEC during the pre-negative list era.

❖ **Fresh clarification unsettles the above position regarding taxability of transactions between distributor & exhibitor**

However, during the pre-negative era the settled position as referred above was unsettled by fresh clarification[24] issued by the CBEC in 2011. In terms of the circular where no such IPR are transferred by the distributor to the exhibitor, the same is not chargeable to service tax under Copyright Services.

However the business transaction needs to be examined for leviability of service tax under other service categories. Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributer or is also involved in giving support services for the business of the distributer, there can be a case of leviability of service tax on the remuneration retained by such theatre owner under “Business Support service” or “Renting of Immovable Property”. The definition of “Business Support service” was amended by Finance Act 2011 to include “operational or administrative assistance in any manner” in its definition.

[23] Circular No. 109/03/2009, dated 23-02-2009
[24] Circular No. 148/17/2011-ST, dated 13-12-2011

The said circular further went to clarify that in case of revenue sharing agreements a "new entity" emerges and the services by each constituent to the new entity becomes taxable services

❖ **Circular upheld in by the Madras High Court**

The above circular led to widespread litigation. However, the circular found further support in the decision of the Madras High Court[25]. Based on this a number of disputes have arisen in respect of nature of transactions between distributors and exhibitors. This issue continues in the negative list era in spite of the existence of exemption under NN 25/2012-ST

❖ **Finance Bill 2015 puts to rest this issue "PROSPECTIVELY"**

The Finance Bill 2015 has amended[26] the exemption to exempt service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or an association of persons consisting of such exhibitor as one of its members is being exempted. However, since the amendment is prospective in nature it would be pertinent to note its impact on the past period disputes relating to this issue

2.5.7 Transport charges on goods to be Export

Currently, Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax[27]

The scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs stations

[25] Mediaone Global Entertainment Ltd Vs CCCE, Chennai [(2014) 34STR 819 (MAD)]
[26] Amendment Notification No. 6/2015-ST, dated 01-03-2015
[27] Notification No. 31/2012-ST, dated 20-06-2012

[All the above New Exemptions shall come into effect from the 1st day of April, 2015.]

2.6 Amendments in "Abatements"

2.6.1 Abatement rates for goods transport services

With a view to bring uniformity in the abatement rates available for various modes of goods transport a uniform rate of abatement is proposed. The current and proposed abatement rates (*presuming Tax rate of 14% w.e.f 1-4-2015*) and effective tax rates are summarized here under:

Description of Taxable service	Existing provisions		Proposed Provisions	
	Taxable value after Abatement rate	Effective Tax rate[28]	Taxable value after Abatement rate	Effective Tax rate[29]
Transport of goods by Rail	30%	3.708%	30%	4.2%
Transport of goods by Road	25%	3.090%	30%	4.2%
Transport of goods by vessel	40%	4.944%	30%	4.2%

In effect for all modes of goods transport Service tax shall be payable on 30% of the value with a uniform condition of non-availment of CENVAT Credit on inputs, input services and capital goods

[The above will come into effect from 01-04-2015]

2.6.2 Abatement rates for Air Transport Services

[28] Tax rate 12.36% (Including primary and secondary Cess)
[29] Presuming a Tax Rate of 14% (not considering Swachh Bharat Cess)

Currently, Service Tax is payable on 40% of value of air transport of passenger across all fare classes. In this regard following changes are proposed:

Description of Taxable service	Existing provisions		Proposed Provisions	
	Taxable value after Abatement rate	Effective Tax rate[28]	Taxable value after Abatement rate	Effective Tax rate[29]
Passenger Transport by Air Economy	40%	4.944%	40%	5.6%
Passenger Transport by other than above	40%	4.944%	60%	8.4%

The above abatements are subject to the condition of non-availment of CENVAT Credit on inputs and capital goods under the CENVAT Credit Rules 2004

[The above will come into effect from 01-04-2015]

2.6.3 Abatement in relation to chit fund withdrawn

Abatement Notification 26/2012-St, dated 20-06-2012 provides an abatement of 30% in the relation to services provided in relation to chit. The answer to whether the services in relation to conducting a chit business in a service liable for payment of service tax was given by the honorable Delhi High Court in the case of Delhi Chit Fund association's case[30].

It was observed by the honorable HC that in a chit fund, the subscription is tendered in any one form of money as

[30] Delhi Chit Fund Association Vs Union of India [2013] 32 taxmann.com 332 (DEL)

defined in section 65B (33) of the Finance Act 1994. It would therefore be a transaction in money and accordingly fall in the exclusion clause of the term "Service" as defined in section 65B(44) of the Act

In order to counter the effect of the above decision it has been proposed to insert an explanation in the definition of service to specifically state the intention of the legislature to levy Service Tax on the activities undertaken by the chit fund foreman in relation to the chit.

It is proposed to remove the abatement relating to chit business. Consequently, service tax shall be payable by the chit fund foreman on the full consideration received by way of fee, commission or any such amount.

Simultaneously, an explanation is being added in entry (i) of section 66D to specifically state that these activities are not covered by the negative list

[The above will come into effect from 01-04-2015]

2.7 Changes in composite rates of service tax

Rule 6 of the Service Tax Rules provide for composite rates for certain services which are alternate to other options provided (if any) in the law relating to service tax. Since the basic rate of service tax under section 66B of the Act has been enhanced, consequent pro-rata revisions have been made in service specific composite rates. The amendments in this regard are tabulated here under:-

Service category	**Existing composite rates**		**Proposed amendments**	
Air Travel booking agents' services	Domestic Travel	0.6% of basic fare	Domestic Travel	0.7% of basic fare
	Intl'	1.2%	Intl'	1.4%

Service category	Existing composite rates		Proposed amendments	
[Rule 6(7)]	bookings	of basic fare	bookings	of basic fare
Life Insurance Services [Rule 6(7A)]	For 1st year of policy	3% of premium	For 1st year of policy	3.5% of premium
	For subsequent Years	1.5% of premium	For subsequent Years	1.75% of premium
Purchase/ Sale of Forex /Money Changing services [Rule 6(7B)]	**Slabs**	**ST payable**	**Slabs**	**ST Payable**
	Up to Rs1,00,000	0.12% of value exchange (Min-INR 30)	Up to Rs1,00,000	0.14% of value exchange (Min-INR 35)
	1,00,001 to 10,00,000	Rs 120 + 0.06% of value exchanged exceeding Rs 1 Lakhs	1,00,001 to 10,00,000	Rs 140 + 0.07% of value exchanged exceeding Rs 1 Lakhs
	> Rs 10,00,000	Rs 660 + 0.012 % of value exchange	> Rs 10,00,000	Rs 770 + 0.014% of value exchange

Service category	Existing composite rates		Proposed amendments	
		exceeding Rs 10,00,000 (Maximum Rs.6,000)		exceeding Rs 10,00,000 (Max Rs,7,000)
Lottery agents' services [Rule 6(7C)]	If pay out guaranteed > 80%	Rs 7,000 on every Rs. 10 Lakhs of face value of tickets printed	If pay out guaranteed > 80%	Rs 8,200 on every Rs. 10 Lakhs of face value of tickets printed
	If pay out guaranteed < 80%	Rs 11,000 on every Rs. 10 Lakhs of face value of tickets printed	If pay out guaranteed < 80%	Rs 12,800 on every Rs. 10 Lakhs of face value of tickets printed

[This will come into effect from 01-04-2015]

2.8 Changes relating to reverse charge mechanism ("RCM")

Changes in respect of RCM are elaborated in the subsequent paragraphs

2.8.1 Partial RCM in respect manpower Supply services and security agency services

Prior to the advent of negative list regime, only import and Goods transport of agency services were covered under the RCM of payment of Service Tax

The advent of negative list regime brought with it a wider net of services under the RCM. Further, a concept of partial RCM was also introduced (where both the provider and receiver of Service share the liability towards payment of Service Tax). Partial RCM coupled with abatements has led to a complex rate structure in place. This has led to the following issues in the corporate service receivers:-

- Complexity in calculations and compliance cost
- Greater risk of short payment of service tax
- Interpretation issues

Instead of introducing simplicity in tax payment and compliance the concept of RCM especially the partial RCM has led to an undesirable situation. It seems that with an intention to address the above issues to some extent the partial RCM has been removed in a couple of services as under:

Description of Taxable service	Existing provisions[31]		Proposed Provisions[32]	
	% of service tax payable by the receiver	Effective Tax rate[28]	% of service tax payable by the receiver	Effective Tax rate[29]
Manpower Supply services	75%	9.27%	100%	14%
Security	75%	9.27%	100%	14%

[31] Notification No. 30/2012-ST, dated 20-06-2012
[32] Amendment Notification No. 7/2015-ST, dated 01-03-2015

Agency Services				

[The above will come into effect from 01-04-2015]

2.8.2 RCM in respect of agents of Mutual Funds and agents of lottery distributors

Consequent to the withdrawal of exemption in respect of services provided by intermediaries of mutual fund and lottery business services provided by these agents are proposed to be covered under the 100% RCM

Accordingly, Service Tax in respect of the fund agent or the distributor, as the case may be, shall be paid by the AMC or the Mutual fund

On the other hand Service Tax in respect of lottery agents shall be paid by the distributor of the lottery

[The above will come into effect from 01-04-2015]

2.9 Amendments in Service Tax Rules

2.9.1 Acceptance of Digitally signed invoices

Computerisation and information technology has reached to a highly developed stage. In large corporate houses thousands of invoices are printed on a daily basis. Apart from waste of paper it also involves task of signing too many invoices and multiple copies in the age of digital signatures

It is relevant to note the provisions of section 5 of the Information Technology Act, 2000. The provision is reproduced here under:-

"Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been

satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation: For the purposes of this section, "Signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "Signature" shall be construed accordingly."

In this backdrop the following amendments have been proposed to the Service Tax Rules in this regards:-

- Any Bill or challan issued under Rule 4A or consignment note issued under Rule 4B can be authenticated by means of digital signature

- Maintenance of records as per Rule 5 has been permitted in electronic form subject to authentication of each page of such records by using a digital signature

- CBEC may specify the conditions, safeguards and procedure to be followed opting for the above facility

[The above will come into effect from 01-03-2015]

2.9.2 List of documents prescribed for ease of registration of single premise

With the intent to promote ease in tax administration and to provide easy and fast registration for single premises Rule 4 has been amended. Order No 1/2015-ST, dated 28-02-2015 has been issued (effective 01-03-2015) specifying the procedure, documents, time limit with respect to registration of single premise

In terms of the said order the registration shall be granted within 2 days of online application on aces.

Subsequently, the prescribed documents as contained in the order shall have to be sent within prescribed time after the online application on aces

2.9.3 Amendment to the definition of "person liable to pay tax"

Rule 2(1)(d) defines "person liable to pay service tax". The definition of person liable to pay service tax is amended to make an "aggregator" (including any of his representative office in India) as a person liable to pay service tax in respect of any service provided under an aggregator model

In case the aggregator does not have any presence in India, including presence by way of a representative, an agent appointed by such aggregator shall pay Service Tax

Consequent amendment is made in NN 30/2012-ST. Entry 11 has been added to provide for payment of service tax under 100% RCM

In this context "aggregator" has been defined under Rule 2(1)(aa) of the STR. The definition is reproduced here under:-

"(aa) ***aggregator*** *means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator"*

This amendment intends to bring within the tax net the fast growing "aggregator" form of business. Further, in the tax has been introduced under 100% RCM. This is because if every partner of the aggregator is tapped they may fall below the basic threshold exemption limit and in that case the revenue cannot be brought within the tax net

2.10 Amendments in CENVAT Credit Rules ("CCR")

2.10.1 CENVAT in respect of inputs and capital goods directly sent to job workers[33]

- Rule 4(1) and 4(2) of the CCR is being amended to provide that where inputs or capital goods are sent directly sent to the job worker

- Accordingly, CENVAT Credit in respect of such inputs or capital goods sent to the premise of the job worker on the direction of the manufacturer shall be available at the time of receipt thereof at the premises of the job worker

- Consequential amendments have been made relating to time limit of 180 days referred to in Rule 5(a)(i) has been amended and accordingly the time limit of 180 days shall be counted from the date of receipt of the inputs in the premises of the job worker

- The time limit in respect of "capital goods" as contained in Rule 5(a)(ii) has been enhanced from 180 days to 2 years from the date of receipt of capital goods in the premises of the job worker

[The above will come into effect from 01-03-2015]

2.10.2 Amendment relating to CENVAT Credit relating to partial RCM

The Cenvat Credit Rules have been amended vide Union Budget 2014 to provide that in case of partial reverse charge, the Cenvat credit on an input service shall be allowed only after the service receiver makes payment of the value of service along with service tax to the service provider. However, in case of full reverse charge, credit can be availed when service receiver pays service tax to the Government, even if the value of service has not been paid to service provider

[33] Amendment to CENVAT Credit Rules 2004 vide Notification No. 6/2015-CE(NT), dated 01-03-2015

Currently, in terms of Rule 4(7) CENVAT Credit in respect of amount payable under partial RCM is linked to the payment of invoice of the service provider. To bring partial RCM parallel to 100% RCM CENVAT it has been proposed to allow CENVAT Credit in such cases the CENVAT Credit can be taken on payment of such service tax

[The above will come into effect from 01-03-2015]

2.10.3 Period for availment of CENVAT increased to 12 months

Finance Act 2014 inserted a proviso in Rule 4(7) of the CENVAT Credit Rules 2004[34]. This amendment restricted the time limit for availing CENVAT Credit to 6 month from the date of the invoice, challan, bill or any other document mentioned in Rule 9(1) of the CENVAT Credit Rules 2004

This amendment had a large scale impact on the large industries where the volume of inputs and input services (on which CENVAT is available) is huge. In that sense the time limit of 6 months was too small to ensure full availment of rightful claims of CENVAT

It has been held[35] by the Apex Court that CENVAT credit is an indefeasible right. CENVAT credit is a benefit for any assessee and the same cannot be denied on the basis of an artificial provision. This will increase the cascading effect and defeat the vary purpose of the CENVAT Credit Rules

The proposed amendment though not in line with the pronouncement of the Apex Court it does provide for a much required breather

[The above will come into effect from 01-03-2015]

[34] Inserted vide Notification No. 21/2014-CE(NT), dated 11-07-2014 w.e.f. 01-09-2014

[35] Collector of Central Excise, Pune Vs Dai Ichi Karkaria Ltd [(1999) 112 ELT 353 (SC)]

2.10.4 Reversal of CENVAT Credit on inputs and input services now required in respect of non-excisable goods

Currently, the definition of exempted goods does not include non-excisable goods. Accordingly, there was no clarity regarding reversal of CENVAT Credit in the case of an assessee manufacturing both, excisable and non-excisable goods. It has been held[36] by Delhi CESTAT that reversal is not required in such cases

In order to reverse the effect of this decision an explanation has been added to Rule 6(1) of the CCR defining "exempted goods" to include non-excisable goods

[The above will come into effect from 01-03-2015]

[36] Sahni Strips and Wires P Ltd Vs CCE [(2012) 283 ELT 418 (Tri-Delhi)

2.10.5 Provisions relating to recovery of CENVAT Credit wrongly availed but not utilised [Rule 14 of CCR]

- The existing provisions relating to recovery of CENVAT Credit wrongly taken and utilised are contained in Rule 14 of the CCR. The provisions relating to interest and recovery contained in section 75 and 73, respectively are made applicable to cases relating to wrong availment and utilisation of CENVAT Credit as per existing Rule 14 of the CCR

- Prior to its substitution[37] it was held[38] by the Apex Court that Rule 14 was applicable even if the CENVAT Credit is "wrongly" taken but not utilised since the words "taken and "utilised" were separate by "OR".

- This anomaly was put to rest w.e.f 17-3-2012 where the interest applicability was made applicable only where such availment was followed by credit being utilised. However, there was no mechanism to provide as to when the inadmissible Credit was utilised.

- Now this amendment seems to re-state the apex court's decision as referred above

- The provisions of Rule 14 have been substituted. A new Sub-rule (1)(i) has been inserted to provide that where the CENVAT Credit has been taken but not utilised, the same shall be recovered from the manufacturer or the service provider in terms of section11A of the CE Act or Section 73 of the Finance Act, as the case may be

- Further a new sub-rule (1)(ii) has been inserted to provide that Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with

[37] Vide Notification No. 18/2012-CE(NT), dated 17-3-2012 w.e.f. 17-3-2012
[38] In Union of India Vs Ind-Swift [(2011) 30 STT 461 (SC)]

interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply *mutatis mutandis* for effecting such recoveries.

- In order to bring clarity regarding point of time where the CENVAT Credit is deemed to have been utilised a new sub-rule (2) has been inserted which clarifies that all credits taken in a month shall be deemed to have been taken as at the last day of the month. It further provides the manner of calculating utilisation of credit as under:-

  a) Opening balance of the month has been utilised first;
  b) Admissible credits have been utilised next
  c) Inadmissible credits have been utilised there after

[The above will come into effect from 01-03-2015]

2.10.6 Provisions relating to penalty in the cases of wrong utilisation [Rule 15 of CCR]

The penalty provisions have now been aligned to the provisions of section 11AC of the CE Act, 76 and 78 of the Finance Act 1994. The amendments are tabulated here under:-

Nature of default	Existing provisions	Proposed provisions
Wrong availment or utilisation of CENVAT Credit	Amount of duty or tax or Rs 2,000 whichever is higher	In terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the CE Act or sub-section (1) of section 76 of the Finance Act (32 of 1994), as the case may be

Wrong availment by a manufacturer involving fraud, collusion, etc	In terms of Section 11AC of the CE Act	In terms of clause (a) or clause (b) of sub-section (1) of section 11AC of the CE Act
Wrong availment by a manufacturer involving fraud, collusion, etc	In terms of Section 78 of the Finance Act	In terms of Section 78(1) of the Finance Act

[The above will come into effect from the date on which the Finance Bill, 2015 receives the assent of the President]

2.11 Amendments relating to penalty & recovery provisions

2.11.1 Recovery of declared unpaid Service Tax dues

Where a person liable to pay service tax files a return in Form ST-3 under self assessment but does not pay the service tax as declared in the return (in part or in full), newly inserted section 73(1B) empowers the government to initiate recovery proceedings by any mode as provided in section 87 of the Act **without serving any notice**

Provisions on similar lines were already contained under Rule 6(6A) of the Service Tax Rules 1994. However, the proposal empowers the government to move forward with recovery without any notice on the assessee

[The above shall come into effect as and when the revised Service Tax rate comes into effect.]

2.11.2 Penalty for failure to pay Service Tax [Sec.76]

The exiting provisions of section 76 of the Act provide for levy of penalty for non-payment, short payment or erroneous refund of service tax in cases not involving fraud, collusion, mis-statement or suppression of facts without the intent to evade service tax. The entire section has been revamped with new provision. For the sake of

better comprehension the proposals are tabulated here under:

Circumstances	Penalty
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of service of show cause notice u/s 73(1) of the Act	No penalty[39]
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of receipt of adjudicating order u/s 73(2) of the Act	25% of the penalty levied in the Order[40] *(provided that the reduced penalty is also paid within the period of 30 days)*
Where the amount of service tax determined in the order u/s 73(2) by the Commissioner (Appeals), Appellate Tribunal or the Court	25% of such modified penalty[41] *(provided that the reduced penalty is also paid within the period of 30 days of receipt of the modifying order)*
In all cases not covered above	Not exceeding 10% of the Service Tax amount

The above provisions in short cap the maximum penalty leviable u/s 76 of the Act to 10% of the service tax amount

[39] Clause (i) of proviso to Section 76(1) of the Act
[40] Clause (ii) of proviso to Section 76(1) of the Act
[41] Section 76(2) of the Finance Act 1994

In terms of provisions of section 78B of the Act the benefit of the reduced penalty shall be applicable in the following cases

- ❖ No show cause notice has been served u/s 73(1) or the proviso there to as at the date of enactment of the Finance Bill 2015

- ❖ No Order u/s 73(2) has been received as at the date of enactment of Finance Bill 2015

2.11.3 Penalty for failure to pay Service Tax fraud, collusion, etc [Sec.78]

The exiting provisions of section 78 of the Act provide for levy of penalty for non-payment, short payment or erroneous refund of service tax in cases involving fraud, collusion, mis-statement or suppression of facts or contravention of any provisions of the Act with the intent to evade service tax. The entire section has been revamped with new provision. For the sake of better comprehension the proposals are tabulated here under:

Circumstances	Penalty
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of service of show cause notice u/s 73(1) of the Act	15% of the Service Tax amount[42]
Where the shortfall or the unpaid service tax has been paid along with interest within 30 days of receipt of adjudicating order u/s 73(2) of the Act	25% *of the service tax* determined in the Order[43] *(provided that the reduced penalty is also paid within the period of 30 days)*

[42] Clause (i) of first proviso to Section 78(1) of the Finance Act 1994
[43] Clause (ii) of first proviso to Section 78(1) of the Finance Act 1994

Where the amount of service tax determined in the order u/s 73(2) by the Commissioner (Appeals), Appellate Tribunal or the Court	25% of the modified amount of service tax as per the decision[44] *(provided that the reduced penalty is also paid within the period of 30 days of receipt of the modifying order)*
In all cases not covered above	Not exceeding 100% of the Service Tax amount

In a way the benefit of 25% penalty provided in section 73(4A) (which is deleted) has been subsumed in this section

In terms of provisions of section 78B of the Act the benefit of the reduced penalty has been made applicable in the following cases

- No show cause notice has been served u/s 73(1) or the proviso there to as at the date of enactment of the Finance Bill 2015

- No Order u/s 73(2) has been received as at the date of enactment of Finance Bill 2015

2.11.4 Penalty in cases under audit, investigation or verification [Sec. 78B(2)]

These provisions are transitory and override the provisions contained in section 78B(1). It intends to cover cases falling under the deleted provisions of section 73(4A). It is evident from a combined reading of the existing provisions of Sec 73(4A) and Sec 78B(2) that, where –

[44] Section 78(2) of the Finance Act 1994

- ❖ Where in the course of any audit, investigation or verification, it is found that there is a short payment, non-payment or erroneous refund, and;
- ❖ Complete details of the transactions are available in the specified records, and;
- ❖ No Show cause notice is served u/s 73(1) of the Act and if served no order u/s 73(2) of the Act has been passed

The penalty shall not exceed 50% of the service tax determined

[The above shall come into effect as and when the revised Service Tax rate comes into effect.]

2.11.5 Section 80 omitted

With the rationalization of the penal provisions section 80 of the Act which provided waiver of the penalty in certain circumstances has been omitted.

In cases where reasonable cause could have been proved the deletion of this section may not be welcomed

2.12 Other Amendments

2.12.1 Remedy against order of Commissioner (Appeals) in cases of rebate of service tax [Section 86]

- ❖ Section 86 relating to appeals is proposed to be amended to make provision for revision by Central Government u/s 35EE of the CE Act applicable to orders passed by the Commissioner (Appeals) in matters involving rebate of input services or inputs in the case of export of services

- ❖ It has been provide that all appeals filed before the Tribunal after the enactment of Finance Bill 2012 and pending as on the date of enactment of Finance Bill 2015 shall be transferred and dealt in accordance with the provisions of section 35EE of the CE Act

2.12.2 Expansion of definition of the term "consideration" [Sec 67]

Section 67 deals with valuation of taxable services. Explanation to Section 67 of the Act contains the definition of the term "consideration". Currently, this includes any amount that is for provision of taxable services. The scope of this definition is proposed to be widened so as *to include any reimbursable cost or expenditure incurred by the service provider* and charged, in the course of provision of service, except in circumstances and subject to such conditions as may be prescribed

In a recent decision of the honorable Delhi High Court it was held[45] that

- On a conjoint reading of Sections 66 and 67 of the Act, it is only the value of the taxable service that can be brought to charge of service tax and nothing more
- The explanation to section 67 of the Act does not include out of pocket expenses such as travel, accommodation, etc
- By including the costs and expenditure, Rule 5(1) of the valuation rules goes beyond the charging provisions and cannot be upheld
- Hence, the above rule is *ultra vires* Section 66 and Section 67 of the Act and has to be stuck down as bad in law

It is evident that this amendment is proposed to overcome the above referred decision of the honorable Delhi High Court

2.12.3 Advance Rulings

The facility of Advance Ruling has been extended to all resident firms, which has been defined to include the following resident entities within its scope:

- A "firm" as per Section 4 of the Indian Partnership Act, 1932;

[45] Intercontinental Consultants & Technocrats Ltd Vs Union of India [(2013) (29) STR 9 (DEL)]

- The limited liability partnership (LLP) as per section (2)(1)(n) of the Limited Liability Partnership Act, 2008.
- LLP which has no company as a partner
- The sole proprietor
- One person company

[The above will come into effect from 01-03-2015]