
Analysis of

Union Budget

2016

on Service Tax

by
CA. ATUL KUMAR GUPTA

B. Com (H), FCA, FCMA, MIMA

Assisted by

CA. VISHAL GILL

Preface

It has always been our endeavor to provide all the members of the society an updated knowledge of service tax. This helps not only in self compliance but it assists all the stakeholders of the professionals may it be peers, industry, clients.

Our earlier editions of book titled 'Introduction of Service Tax', 'Convergence to Accrual System of Taxation in Service Tax', 'Analysis of Service Tax Provisions Introduced by Finance Bill 2015', 'Refunds under Service Tax', GST Concept & Roadmap, and Do You Know Series have always tried to provide quality advice and regular updation on service tax matters.

Now it gives us immense pleasure to bring out seventh edition of Budget Booklet titled "Analysis of Service Tax Provisions Introduced by Finance Bill, 2016" which will share the extracts of the Budget 2016 along with a detailed analysis of the newly introduced provisions and its impact on the present provisions.

The underlying premise of this book is to evaluate the provisions of the Budget 2016 in detail so as to find out the impact along with the pros and cons of the newly proposed provisions regarding service tax. This part will add to the comprehensiveness and value of the work, and will, we doubt not, meet with favour equal to that of the parts previously published.

Hope this will assist and support the readers in their professional endeavors.

The suggestions for advancement in this book are always welcome and will be highly apprehended.

Always Yours,

Atul Kumar Gupta

with Team "Do You Know Series"

New Delhi

1st March, 2016

Contents at a glance

S. No.	Topics	Page No.
1.	Changes applicable w.e.f. 1 st March, 2016	7-17
2.	Changes applicable w.e.f. 1 st April, 2016	18-35
3.	Changes applicable w.e.f. 1 st June, 2016 after enactment of the Finance Bill, 2016 in respect of each provision	36-38
4.	Changes applicable from the date of enactment of the Finance Bill, 2016	39-52

A. Changes applicable w.e.f. 01 March 2016

A.1. Restoration of exemption on services provided to the Government, a local authority or a governmental authority

Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. 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, (ii) a clinical, or (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act; was withdrawn with effect from 1.4.2015 vide Notification No. 06/2015-ST dated 01 March 2015 but the Ministry of Finance vide **Notification No. 09/2016-ST dated 01 March 2016 vide entry no. 12A in the Notification No. 25/2012-ST dated 20 June 2012 had restored such exemption** for the services provided under a contract which had been entered into prior to 01 March 2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31 March 2020. [**Notification No. 25/2012-ST as amended by Notification No. 09/2016- ST dated 1st March, 2016 refers**].

The Finance Bill, 2016 has also proposed a new **Section 102 in**

the Finance Act, 1994 which provides that no service tax shall be levied or collected on such contracts during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive) **[The changes in the Finance Act, 1994 shall come into force on the day the Finance Bill, 2016 is enacted.]**

A.2. Restoration of exemption on services to an airport, port.

Exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port was withdrawn with effect from 01.04.2015 vide Notification No. 06/2015-ST dated 01.03.2015. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, that the contract had been entered into prior to 01.03.2015. The exemption is being restored till 31.03.2020. **[Notification No. 25/2012-ST as amended by Notification No. 09/2016- ST dated 1st March, 2016 refers].**

The Finance Bill, 2016 has also proposed a new **Section 103 in the Finance Act, 1994** which provides that no Service tax shall be levied or collected on such contracts during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive). **[The changes in the Finance Act, 1994 shall come into force on the day the Finance Bill, 2016 is enacted.]**

A.3. Withdrawal of exemption on services to monorail or metro, in respect of contracts entered into on or after 01 March 2016

The Ministry of Finance vide Notification No. 09/2016-ST dated 01 March 2016 had withdrawn the exemption which had been earlier provided vide Notification No. 25/2012-ST dated 20 June 2012 as amended in respect of construction, erection, commissioning or installation of original works pertaining to **monorail or metro** (under S. No 14 of the notification No. 25/12-ST).

Notification No. 09/2016-ST dated 01 March 2016 amends the clause 14(a) of Notification No. 25/2012-ST dated 20 June 2012 and the same now reads as under:

(a) railways, excluding monorail or metro;

In clause (a) of Entry no. 14 of the notification number 25/2012-ST following Explanation has also been inserted:

Explanation: "The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt."

Accordingly, the above mentioned exemption had been withdrawn only in respect of contracts entered into on or after 1st March 2016.

A.4. Exemption to services by way of construction etc.

The Ministry of Finance vide **Notification No 09/2016-ST dated 01 March 2016** had introduced the new exemptions by inserting the **clause (ba) and (bb) in the Sr. No 13** and by

inserting the **clause (ca) in the Sr. No. 14** of the Mega Exemption Notification N. 25/2012-ST dated 20 June 2012. The same read as under:

The following clauses had been inserted after item (b) in the Sr. 13 of the Mega Exemption Notification No. 25/2012-ST dated 20 June 2012

(ba) 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 Mantri Awas Yojana, only for existing slum dwellers.

(bb) 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 Mantri Awas Yojana;”;

Accordingly, Services by way of construction, erection etc. of a civil structure or any other original works pertaining to the “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” component of Housing for All (HFA) (Urban) Mission / Pradhan Mantri Awas Yojana (PMAY), except in respect of such dwelling units of the projects which are not constructed for existing slum dwellers, is being exempted from service tax and;

Services by way of construction, erection etc., of a civil structure or any other original works pertaining to the “Beneficiary-led individual house construction / enhancement” component of Housing for All (HFA) (Urban) Mission/ Pradhan

Mantri Awas Yojana (PMAY) is being exempted from service tax.

The following clauses had been inserted after item (c) in the Sr. 14 of the **Mega Exemption Notification No. 25/2012-ST dated 20 June 2012**

“(ca) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:

(i) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;

(ii) any housing scheme of a State Government.”.

Accordingly, 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 project approved by the competent authority under the “Affordable housing in partnership” component of PMAY or any housing scheme of a State Government are being exempted from service tax.

A.5. Exemption to specified services provided by the Indian Institutes of Management (IIM)

The Ministry of Finance vide **Notification No. 09/2016-ST dated 01 March 2016** had amended the Notification No. 25/2012-ST dated 20 June 2012 by inserting the **entry no. 9B**, which reads as under:

“9B. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government,

to their students, by way of the following educational programmes, except Executive Development Programme, -

- (a) 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 of Management;
- (b) fellow programme in Management;
- (c) five year integrated programme in Management.

Accordingly, it has been reiterated by Secretary, MHRD vide letter D.O. 3/5/2013-TS.V dated 15.1.2016 that the IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter –University Board of India etc.). In view of this, the exemption being given to the above programmes of IIMs is clarificatory in nature and in view of the same, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.

Hence, services by way of 2 year full time Post Graduate Programme in Management (PGPM) (other than executive development programme), Integrated Programme in Management and Fellowship Programme in Management (FPM) are being exempted from Service tax with effect from 1st March, 2016.

A.6. Notification to ensure that Information Technology Software is subjected to either central excise duty or service tax. To deal with assessment of media with recorded Information Technology Software, where RSP is affixed or assessment when RSP is not required

It has always been a litigative issue whether Service tax is applicable on sale of software or not. Earlier to avoid any kind of litigation, government introduced activity of sale of software under the ambit of declared services. However, the ambiguity in respect of sale of software in portable media is liable to Service tax or not.

Now, in the proposed Finance Bill, 2016, the Government had issued a notification to be effective from 01st March 2016 to deal with the taxability of such sale of software. The Government has vide notification no. 11/2016-ST dated 01st March 2016 has exempted from the levy of Service tax if such software services is provided by way of recording on a media falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and there is a requirement of declaring Retail Sale price under any law for the time being in force:

S. No.	Activity	Primary Requirements	Taxability
1.	Software Services	1. Software recorded in media mentioned under Chapter 85 of the CETA,1985	Service tax will be exempt and the

		2. Declare retail sale price under any law for the time being in force	activity attracts excise duty.
2.	Software Services	1. Software recorded in media 2. No requirement of declared retail sale price under any specified law for the time being force.	Service Tax will be applicable.

A.7. Insertion of Explanations in Rule 5 of Point of Taxation Rules, 2011

The Finance Act, 2015 had introduced new levy with nomenclature of Swacch Bharat Cess (SBC) which is to be considered as Service tax and provision of Finance Act shall be applicable on it. At the introduction of SBC, there arose an ambiguity regarding determination of point of taxation on transaction executed prior to its introduction.

There was no specific rule under Point of Taxation Rules 2011 to determine the point of taxation in case of new levy however Rule 5 was restricted to the determination of point of taxation in case of a service is taxed for the first time.

Now, the government has brought notification no 10/2016-ST dated 01st March 2016 to introduce an explanation to Rule 5 bring new levy or taxes under its ambit. By virtue of said notification, the point of taxation in case of new levy shall be determined in accordance with Rule 5 of the Point of Taxation Rules, 2011.

Further, since the amendment has been brought by way of an explanation, hence it shall be construed as a retrospective amendment.

A.8. CENVAT credit is being allowed to service providers providing services by way of transportation of goods by a vessel from India to abroad

Service by way of transportation of goods by a vessel from custom station of clearance in India to a place outside India is being excluded from the definition of exempted service. This would allow shipping lines to take credit on input and input services used in providing the said services.

A.9. Time limit for filing the 'Refund claim' had been notified vide Notification No. 14/2016-ST dated 01 March 2016

Earlier, there were disputes with respect to time limit for filing application for refund of CENVAT credit in the case of services since "relevant date" in the case of Export of services was not defined Accordingly, Notification No. 27/2012-CE(NT) dated 18 June 2012 is being amended w.e.f 01 March 2016 by Notification No 14/2016 dated 01 March 2016 so as to provide that time limit for filing application for refund of CENVAT Credit under Rule-5 of

CENVAT Credit Rules, 2004 in case of Export of Services is **One Year** from the date of:

- a) Receipt of payment in convertible foreign exchange where provision of service has been completed prior to receipt of such payment. Or
- b) Issue of invoice where payment for the service has been received in advance prior to the date of issue of the Invoice.

A.10. Service provided by Container Train Operators

It is clarified vide Para 15.3 of D.O.F No.334/8/2016-TRU dated 29th February 2016 that the services provided by Indian railways to Container Train Operators of Haulage of their container train is a service of “Transport of Goods by Rail” and is therefore, eligible for abatement and tax treatment accordingly, that is, for abatement @ 70 percent however no specific circulars have been issued in this regard.

Moreover, credit of Input services shall be allowed w.e.f. 01st April 2016 vide Notification No. 08/2016-ST dated 01st March 2016.

A.11. Change in CENVAT Credit Rules, 2004

Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of, “exempted service”. This would allow shipping lines to take credit on inputs and input services used in providing the said service. *[Amendment in rule 2, clause (e) refers]*

Further, Rule 6(7) is being amended so as to provide that credit taken on inputs and input services used in providing a service by way of “transportation of goods by a vessel from customs station of clearance in India to a place outside India shall not be required to be reversed by the shipping lines.

It may be mentioned here that this service presently qualifies as an “exempted service” on account of Rule 10 of Place of Provision of Supply Rules. Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of “exempted service” by amending rule 2(e) of the rules as discussed above. Amendment in sub-rule (7) coupled with the corresponding amendment in the definition of Exempted Service is aimed at allowing credit of eligible inputs, input services and capital goods for providing the said service and providing Indian shipping lines a level playing field vis a vis the foreign shipping lines. The credit available may be used by Indian shipping lines to pay service tax on the services of transportation of goods by a vessel from outside India to the customs station of clearance in India, which would become taxable w.e.f. 1 June 2016 after enactment of Finance Bill 2016.

B. Changes applicable w.e.f. 1st April, 2016

B.1. Services by Senior Advocate

S No. 6 of Mega exemption notification no. 25/2012, has been amended vide Notification 9/2016, dated 1-3-2016 whereby, exemption in respect of Services provided by a senior advocate to an advocate or partnership firm of advocates has been withdrawn.

Further, the said service tax by senior advocate is payable under forward charge.

The exemption earlier provided under Clause (c) of the S No. 6, i.e. A person represented on an arbitral tribunal to an arbitral tribunal, has also been withdrawn.

B.2. Services of transport of passengers by ropeway, cable car or aerial tramway

Exemption provided under Sl. No. 23 (c) of the Mega Exemption Notification No.25/2012-ST regarding transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn, vide notification 9/2016 dated 1-3-2016.

B.3. New exemptions for services

Notification 25/2012 has been amended by adding various new exemptions for services, vide notification 9/2016 dated 1-3-2016. The same are penned down as under:

- a) **New entry at S. No. 9C of notification No. 25/2012-ST**- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship
- b) **New entry at S. No. 9D of notification No. 25/2012-ST**- Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners.
- c) **Entry no. 16 of notification No. 25/2012-ST revised**- The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, is being increased from Rs 1 lakh to Rs 1.5 lakh per performance.
- d) **New entry at S. No. 26C of notification No. 25/2012**- The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA) of India
- e) **New entry at S. No. 26(q) of notification No. 25/2012**- Services of general insurance business provided under “Niramaya” Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies.

- f) **New entry at S. No. 49 of notification No. 25/2012-** Services provided by Employees' Provident Fund Organisation (EPFO) to employees.
- g) **New entry at S. No. 50 of notification No. 25/2012-ST-** Services provided by Insurance Regulatory and Development Authority (IRDA) of India.
- h) **New entry at S. No. 51 of notification No. 25/2012-ST-** Services provided by Securities and Exchange Board of India (SEBI) set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
- i) **New entry at S. No. 52 of notification No. 25/2012-ST-** Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination
- j) **Amendment in notification No. 32/2012-ST-** Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubates.

B.4. Reverse Charge Mechanism

- a) **Services by Mutual Fund Agents to Asset Management Co.-** The exemption to services provided by mutual fund agents/distributors to an asset management company was withdrawn, in Union Budget, 2015, as a policy decision to prune exemptions.

However, these services were put under reverse charge liability, i.e., the Asset Management Company was made liable to pay service tax for the services received from such agents/distributors.

Vide Union Budget 2016, Services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge, i.e. the service provider is being made liable to pay service tax. The small sub-agents down the distribution chain will still be eligible for small service provider exemption [threshold turnover of Rs 10 lakh/year] and a very small number will be liable to pay service tax.

Accordingly, Rule 2(1)(d)(EEA) of Service Tax Rules, 1994 making service recipient, as the person liable for paying service tax, that is, mutual fund or Asset Management Company is being deleted along with consequential changes in Notification No. 30/2012-ST.

- b) **Services provided by Government**- The liability to pay service tax on any service (excluding services of Department of Post, services in relation to aircraft & vessels, transport of goods or passengers and renting of immovable property) provided by Government or a local authority to business entities shall be on the service recipient.

Consequently, notification No. 30/2012-ST (*notification governing reverse charge*) is being amended so as to delete the words “by way of support services” appearing at Sl. No. 6 of the Table in the said notification with effect from 1st April, 2016.

B.5. Amendments to Abatements Notification 26/2012-ST vide Notification no. 08/2016-ST dt. 01.03.2016

S. No.	Nature of Service	Analysis
2	Transport of goods by rail (other than service specified at Sl. No. 2A below)	<p>At present, service tax is payable on 30% of the value of service of transport of goods by rail without CENVAT credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service.</p> <p>It is now proposed to continue with the same level of abatement with admissibility of CENVAT credit of input services for transport of goods by rail (other than “transport of goods in containers by rail by any person other than Indian Railway”).</p>
2A	Transport of goods in containers by rail by any person other than Indian Railways	<p>Newly Inserted</p> <p>A reduced abatement rate of 60% with credit of input services is being prescribed</p>

		<p>for transport of goods in containers by rail by any person other than Indian Railway.</p> <p>However, said abatement allowed only if, CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</p>
3	Transport of passengers, with or without accompanied belongings by rail	At present service tax is leviable on 30% of the amount charged without CENVAT Credit of inputs, input services and capital goods. It is proposed to continue with same level of abatement with CENVAT Credit of input services.
7	Services of goods transport agency in relation to transportation of goods other than used household goods.	<i>“Services of goods transport agency in relation to transportation of goods other than used household goods.”; substituted for “Services of goods transport agency in relation to transportation of goods”.</i>

7A	Services of goods transport agency in relation to transportation of used household goods	<p>Newly Inserted</p> <p>Abatement on transport of used household goods by a Goods Transport Agency (GTA) is being rationalised at the rate of 60% without availment of CENVAT credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA).</p>
8	Services provided by a foreman of chit fund in relation to chit	<p>Newly inserted entry, however, earlier said entry existed which was omitted w.e.f. 1st April, 2015.</p> <p>Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that CENVAT credit of inputs,</p>

		input services and capital goods has not been availed.
10	Transport of goods in a vessel	Earlier credit of input services was also not admissible, could be availed now
11	Services by a tour operator in relation to,- (i) a tour, only for the purpose of arranging or booking accommodation for any person (ii) tours other than (i) above	Abatement rates in respect of services by a tour operator in relation to a tour other than in para (i) above, is being rationalised from 75% and 60% to 70%. Consequently, the definition of “package tour” as provided in the relevant notification is being omitted.
12	Services of construction of complex, building or civil structure, or a part thereof	At present, two rates of abatement i.e. 75% and 70% have been prescribed. Now a uniform abatement @ 70% is prescribed.

B.6. Changes in Service Tax Rules, 1994

- a) The benefit of (a) quarterly payment of Service Tax being extended to OPC and HUF. However, in case of OPC the benefit to make payment on quarterly basis is available only if the aggregate value of taxable service provided from one or more premises is fifty lakhs or less in previous financial year.
- b) Payment on receipt basis being extended to OPC.
- c) The service tax liability on single premium annuity (insurance) policies is being rationalized and the effective alternate service tax rate (composition rate) is being prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service. Amendments are being made in rule 7A of Service Tax Rules, 1994 accordingly.

B.7. Service Tax Return on Annual basis

Currently, Service Tax return is being submitted on half year basis therefore assessee is required to file two returns for every Financial Year. However, Finance Bill, 2016 enlarges the scope of return and proposed that w.e.f. 1st April 2016 every assessee will be required to file one more additional return i.e. Annual Return on or before 30th November of the succeeding Financial Year.

By virtue of newly inserted Rule 7(3B) of Service Tax Rules, 1994, the Central Government may subject to condition or limitations

specify by the class of person who may not be required to submit annual return.

The assesses who will filed annual return by the due date may submit a revise return within a period of one month from the date of submission of the said annual return.

Where the annual return is filed by the assesses after the due date, the assesses shall pay to the credit of Central Government, an amount calculated at the rate of one hundred rupees per day for the period of delay in filing of such return subject to a maximum of twenty thousand rupees.

B.8. Changes in CENVAT Credit Rules, 2004 [Notification No. 13/2016-CE(NT)]

With a view to simplify and rationalize the CENVAT Credit Rules, 2004, a number of amendments are being carried out in them. Following are the important changes:

B.8.1. Change in the definition of Capital Goods

Wagons of sub heading 8606 92 of the Central Excise Tariff and equipment and appliance used in an office located within a factory are being included in the definition of capital goods so as to allow CENVAT credit on the same. *[Amendment in rule 2, clause (a) sub-clause (A) item (i) and condition No. (1) of the Rules refers].*

CENVAT credit on capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory. *[Amendment in rule 2 clause (a), sub-clause (A)condition (1A)].*

B.8.2. Change in the definition of Inputs

All capital goods having value up to Rs. ten thousand per piece are being included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received.

CENVAT credit on inputs used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory.

[Amendment in rule 2 clause (k) refers]

B.8.3. CENVAT Credit for radio-frequency spectrum, mines etc.

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

B.8.4. Provisions related to calculation of CENVAT Credit attributable to exempted services has been redrafted

- a) Rule 6 of CENVAT Credit Rules, 2004 which provides for reversal of credit in respect of inputs and input services used in manufacturer of exempted goods or for provision of exempted service is being redrafted with the objective of simplifying and rationalizing the same. Under redrafted provision following options are available:
- b) Pay an amount equal to 6% of value of exempted goods and 7% of value of exempted services, subject to a maximum of the total credit taken. Maximum limit has been prescribed to ensure that the amount to be paid does not exceed the total credit taken; or
- c) Pay an amount proportionately calculated as under:
- d) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services;
- e) Full credit of inputs or input services used exclusively in final products excluding manufacture of exempted goods or output services excluding exempted services;
- f) Common credit shall be attributable towards exempted goods and exempted services on the basis of turnover.

Illustration:

Turnover		CENVAT Credit	
Taxable Services	Rs. 2 Cr.	Exclusively for taxable services	Rs. 10 L
Exempted Services	Rs. 1 Cr.	Exclusively for exempted services	Rs. 4 L
		Common	Rs. 6 L
Total	Rs. 3 Cr.		Rs. 20 L

Amount required to be reversed under Rule 6:

According to new provisions	According to old provisions
Option 1: 7% of Rs. 1 Cr. = Rs. 7 L	Option 1: Rs. 4 L plus 7% of Rs. 1 Cr. = Rs. 11 L
Option 2: Rs. 4 L plus Rs. $6 \times \frac{1}{3}$ L = Rs. 6 L	Option 2: Rs. 4 L plus Rs. $16 \times \frac{1}{3}$ L = Rs. 9.33 L

B.8.5. Other changes in Rule 6

- a) Provision for reversal of CENVAT Credit pertaining to activities not covered under the definition of service e.g. sale of immovable property has been introduced;
- b) Benefit of Rule 6(3) has been extended to banking companies by giving an option to banking company, a financial institution including non-banking financial company for CENVAT Credit reversal under sub-rule (1), (2) and (3) of the Rule 6 along with rule 6(3B) of the CENVAT Credit Rules, 2004.
- c) Option can be exercised as per new sub-rule (3AA) at the time of adjudication and pay the amount prescribed subject to the payment of interest calculated at the rate of 15% P.A.
- d) The interest liability under Rule 6 for short payment will be 15% from 30 June till the date of actual payment.
- e) New sub-rule (3AB) is being inserted as transitional provision to provide that the existing rule 6 of CCR would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.
- f) No CENVAT credit shall be allowed on such capital goods, when used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service.

B.8.6. Change in manner of distribution of CENVAT Credit by Input Service Distributor (ISD)

- a) Rule 7 of the Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units. Outsourced manufacturing unit is being defined to mean either a job-worker who is required to pay duty on the value determined under the provisions of rule 10A of the Central Excise Valuation (Determination of Price Of Excisable Goods) Rules, 2000, on the goods manufactured for the Input Service Distributor or a manufacturer who manufactures goods, for the Input Service Distributor under a contract, bearing the brand name of the Input Service Distributor and is required to pay duty on value determined under the provisions of section 4A of the Central Excise Act, 1944. (*Amendment in rule 2 (m) and rule 7 refers*)
- b) Presently, rule 7 provides that credit of service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to, *inter alia*, the following conditions,
- credit attributable to a particular unit shall be attributed to that unit only.

- credit attributable to more than one unit but not all shall be to attributed to those units only and not to all units.
- credit attributable to all units shall be attributed to all the units.

Credit shall be distributed pro rata on the basis of turnover as is done in the present rules.

- c) It is also being provided that an outsourced manufacturing unit shall maintain separate account of credit received from each of the input service distributors and shall use it for payment of duty on goods manufactured for Input Service Distributor concerned. The credit of service tax paid on input services, available with the Input Service Distributor as on 31st of March, 2016 shall not be distributed to an outsourced manufacturing unit. Further, provisions of rule 6 of CENVAT Credit Rules, 2004 relating to reversal of credit in respect of inputs and input services used in manufacture of exempted goods or for provision of exempted services, shall apply to the units availing the CENVAT credit distributed by Input Service Distributor and not to the Input Service Distributor.

B.8.7. Insertion of new Rule 7B for multiple manufacturing units to maintain a common warehouse for inputs.

Rule 7B is being inserted in CENVAT Credit Rules, 2004 so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall

be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.

B.8.8. Change in documentation and accounts for clearance of inputs or capitals goods by service provider

Presently, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing CENVAT credit. It is being provided that an invoice issued by a service provider for clearance of inputs or capitals goods shall also be a valid document for availing CENVAT credit. [Amendment in Rule 9 (a) (i) refers.]

B.8.9. Annual Return by manufacturer of final products or provider of output services

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

B.8.10. Change in method for determining whether a particular credit has been utilized

The existing sub- rule (2) of rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has

been utilized. The said sub rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

B.8.11. Change in the condition of allowing CCR

- a) Manufacturer of final products is being allowed to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises. *[Amendment in Rule 4(5) (b) refers]*
- b) Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is valid for a financial year. It is being provided that the same would be valid for three financial years. *[Amendment in rule 4(6) refers].*

C. Changes w.e.f. 1st day of June, 2016 after enactment of the Finance Bill, 2016 in respect of each provision

C.1. Krishi Kalyan Cess: (Chapter VI/Clause 158 of the Bill)

Krishi Kalyan Cess is proposed to be levied with effect from 1st June, 2016 on any or all the taxable services at the rate of 0.5% on the value of such taxable services for the purpose of financing and promoting initiatives to improving agriculture or any other purpose relating thereto.

The Krishi Kalyan Cess leviable is in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.

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

The proceeds of the Krishi Kalyan Cess shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Krishi Kalyan Cess for such purposes specified in sub-section (2), as it may consider necessary.

C.2. Negative List entry that covers “service of transportation of passengers, with or without accompanied belongings, by a stage carriage” is to be omitted [section 66D (o)(i)]

- a) From 1.06.2016 the service of transportation of passengers with or without accompanied by a Air-conditioned stage carrier become taxable, except in case if such service is provided by non-air conditioned contract carriage will continue to be exempt by way of exemption notification no. 25/2015-ST, as amended by Notification no. 9/2016-ST dated 1.March 2016)
(New entry at s.no. 23(bb) of notification no. 25/2012-ST)
- b) This Air conditioned stage carrier is liable to tax at rate of 40% after abatement of 60% as applicable to the passenger by a contract carriage subject to non-availment of CENVAT credit.
(Notification No. 08/2016-ST dated 29th Feburary,2016)

C.3. Negative List that covers services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance is to be omitted [section 66D (p)(ii)]

- a) Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance is to be omitted from Negative list. (clause (p)(ii) of Section 66D)

- b) However service by an **aircraft will continue to exempt** by way of Exemption notification no. 09/2016-ST dated 1st March 2016)
(New entry at s.no. 53 of notification no. 25/2012-ST)
- c) Now domestic shipping line registered in India will pay service tax under forward charge while the service availed from foreign shipping line by an business entity located in India will get taxed under Reverse Charge at hand of business entity.
- d) The service tax so paid will be available as credit with the Indian Manufacturer or service provider availing such service (subject to fulfillment of the other existing conditions).
- e) The CEVAT credit on eligible Inputs, Input services and Capital Goods is being allowed for providing the service of transportation of goods by a vessel from custom station of clearance in India to a place outside India. (Clause 146 of Bill)
- f) It is further clarified that service tax levied on such service shall not be part of value of custom duty purpose.

D. Changes applicable from the date of enactment of the Finance Bill, 2016

D.1. Change in the explanation 2 of the section 65B(44) of the Finance Act, 1994

Activity carried out by a lottery distributor or selling agent of the state government in relation to the promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind in accordance with the Lotteries (Regulation) Act 1998 is now become taxable. Section 4(c) of the Lotteries (Regulation) Act, 1998 provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Thus, as per the provision of the Lotteries (Regulation) Act, 1998, the transaction between the state government and the distributors or selling agents is on principal to agent basis. Any contract contrary to the aforesaid legal provision is ultra vires the provisions of India Contracts, Act, 1872 and thus not legally enforceable. Explanation 2 in section 65B(44) is proposed to be amended to clarify that activity carried out by a lottery distributor or selling agents of the state government under the provisions of Lotteries (Regulation) Act, 1998 is leviable to service tax.

D.2. Moving of Exemption on various services provided by Educational Institution from Negative List to Mega Exemption

Earlier Point No - 12 of Section 66D of the Finance Act, 1994 i.e. Negative List covers specified educational services to keep them out of ambit of service tax. These services include:

Services by way of –

- a) Pre-school education and education upto higher secondary school or equivalent;
- b) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; &
- c) Education as a part of an approved vocational education courses.

Now, Central Government has proposed to omit or exclude the same from Negative List. As a result of the same above services are no more non-taxable now but by accepting the fact that these services are essential in nature, service tax exemption on them is being continued by incorporating them in Mega exemption notification.

Notification No 09/2016 – ST dated 01-03-2016 provides the following:

(1) Clause (oa) of Para 2 of NN 25/2012 – ST dated 20-06-2012 has been substituted with new definition of Educational Institution which is as follows:

“Educational Institution” means an institution providing services by way of:

- a) Pre-school education and education upto higher secondary school or equivalent;
- b) Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force; &
- c) Education as a part of an approved vocational education courses.

As a result of above changes, the upper said services will now be exempted under clause (9A) of Para 1 of Mega Exemption Notification i.e. NN 25/2012 – ST.

(2) A clause (ba) has been inserted in NN 25/2012 – ST which defines the approved vocational education course as follows:

“Approved vocational education course” means,-

- (i) 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, 1961; or
- (ii) 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 and Entrepreneurship.

[Above definition of “Approved Vocational Education Course” was earlier given in sub-section (11) of Section 65B of Finance Act, 1994 which have been omitted now]

D.3. Applicability of Service Tax on Radio Frequency Spectrum;

Finance Bill, 2016 has introduced the service tax applicability on long awaited dispute on right to use the radio - frequency spectrum transfers by government and subsequent transfers thereof. Previously, there was ambiguity whether to treat such right as sale of intangible goods or service. Now, it is clarified by Finance Bill, 2016 that the transfer of such right is a declared service and it will be taxable from the date when the Finance Bill, 2016 enacted.

D.4. Changes in the section 67A of the Finance Act 1994

Section 67A has been amended to insert sub-section (2) which provides the power to bring rules in order to determine the point in time of rate of service tax.

D.5. Changes in the section 73 of the Finance Act 1994

Now time limit for issuing notice for recovery of service tax which has not been levied or paid or which has been short levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is being extended by one more year i.e. from eighteen months to thirty months.

D.6. Changes in Interest Rate Applicable for delayed payment of Service Tax

A major change has been proposed by CG in the interest rates which are applicable for delayed payment of service tax by any person.

Earlier, as per Section-75 of Finance Act, 1994 read with Notification No 12/2014 – ST a person was required to pay interest at the following rates for late payment of Service Tax:

Sl. No.	Period of Delay	Interest Rate
1.	Upto Six Months	18%
2.	More than Six months and upto one year	18% for the first six months of delay and 24% for the delay beyond six months
3.	More than one year	18% for the first six months of delay; 24% for the period beyond six months upto one year and 30% for any delay beyond one year

Now, as per NN 13/2016 – ST dated 01-03-2016, CG has superseded the NN 12/2014 – ST and has fixed the rate of simple interest per annum as follows:

Sl. No.	Situation	Rate of Interest
1.	Collection of any amount as service tax but failing to pay the amount so	24 per cent

	collected to the credit of the Central Government on or before the date on which such payment becomes due.	
2.	Other than in situation covered under serial number 1 above	15 per cent

According to above proposed changes, all persons are required to pay interest at lower rate of 15% p.a. except when such person has collected the amount and then failed to pay the same in the credit of Central Government.

In relation to above change, CG has also proposed to insert proviso in Section 75 of Finance Act, 1994 w. e. f. enactment of Finance Act, 2016 which provides that a higher rate of interest would apply to person who has collected the amount of service tax from the service recipient but not deposited the same with the Central Government.

D.7. Insertion of Explanation in Section 78A

Section 78A has prescribed the penal provision for the officer of the company who at the time of contravention was in charge, and was reasonable to the company for the conduct of business of such company, shall be liable to a penalty which may extend to one lakh rupees.

In the given section, Finance Bill 2016 has proposed an explanation and 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.

The essence of the above explanation is that where a proceeding by way of show cause notice under sub-section(i) or proviso to sub-section(1) of Section 73 is concluded by way of;

Section	Particular	Penalty
76	<p>Clause (i) of first proviso to Section 76 Service tax not been levied or paid has been short levied or paid or erroneously refunded;</p> <p>(i) Where service tax and interest are paid within thirty days from the date of service of notice.</p>	Nil
78	<p>Clause (i) of the second proviso to Section 78 Service tax not been levied or paid has been short levied or paid or erroneously</p>	

	<p>refunded by the reason specified in the given section;</p> <p>(i) Where service tax and interest are paid within thirty days from the date of service of notice.</p>	<p>15 Per cent of Service Tax.</p>
--	---	------------------------------------

In nutshell we can say that if penalty under clause (i) of the first proviso to Section 76 is nil or fifteen percent of service tax in clause (i) of second proviso to Section 78 of the Finance Act, 1994, then penalty under Section 78A of the Act, shall also be deemed to have been concluded on the officer of the company.

D.8. Amendment in Section 89

Finance Bill, 2016 has increased the amount of offence from fifty lakh to two Crore in respect of the followings cases:

- (i) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (ii) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due,

The CBEC has earlier clarified in circular no. 1010/17/2015-CX dated 23rd October 2015 where the government has increased the limit from fifty lakh to one crore in case of evasion of service tax or misuse of CENVAT Credit in relation to offences specified under sub-section (1) of the section 89 of the Finance Act, 1994. Now, Finance Bill, 2016 has increased the amount from one crore to two crore.

After the date of enactment of Finance Bill, 2016 the term of imprisonment will be decided on the basis of an offence amount of Rs 2 Crore.

D.9. Amendment in Section 90

Finance Bill 2016 has omitted sub-section (2) of Section 90 the Act and the same is effective from the date of enactment of Finance Bill, 2016. Sub-Section 2 of Section 90 of the Finance Act, 1994, Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences, except the offences specified in sub-section (1), shall be non-cognizable and bailable. After enactment of Finance Bill, 2016 all offence will be cognizable and non –bailable.

D.10. Amendment in Section 91

Finance Bill 2016 has omitted clause (i) from sub-section (1) of the Section 91 which is related to the power of arrest. After enactment of Finance Bill, 2016 the power of principal commissioner of central excise or commissioner of central excise related to an offence as specified in clause (i) of sub-section (1) of Section 89 of the Act, will be withdrawn.

D.11. Change in the section 93A: Power to Grant rebate

Changes have been made in the section 93A of the Act in order to enable allowing of rebate by way of notification as well as rules.

D.12. Retrospective Effect of Changes made through NN 01/2016 – ST in certain provisions of NN 41/2012 – ST dated 29-06-2012

Earlier, NN 01/2016 – ST dated 03-02-2016 was issued to alter the provisions of NN 41/2012 – ST dated 29-06-2012 to the effect that definition of specified services was amended to substitute ‘Place of Removal’ with ‘factory or any other place or premises of production or manufacture of the said goods’. Now, as per amended provision definition of specified services is as follows:

“Specified Services” means-

- (a) In case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export;
- (b) In case of goods other than (i) above, taxable services used for the export of said goods.

NN 01/2016 – ST was effective from the date of Notification i.e. 03-02-2016 but to extend the benefit of above said notification to persons who have filed refund claim earlier as well and to remove the ambiguity in service tax department for refund claim filed earlier, CG has proposed to amend it with retrospective effect from the date of parent notification i.e. from 01-07-2012.

Further, time period of one month is proposed to be allowed to the exporters whose claims of refund were earlier rejected

in the absence of amendment carried out vide Notification No 01/2016 – ST. Therefore, now time limit of one month will be available from the date of enactment of Finance Act, 2016 to file rebate claims rejected earlier.

D.13. Exemption from service tax on services provided by way of construction, erection, maintenance or alteration etc. of canal, dam or other irrigation works

By virtue of Union Budget 2016, Service tax exemption has been provided in respect of the below mentioned services from retrospective effect.

As per Clause (d) of S.No.12 of the Notification No. 25/2012-st, services provided to the Government, a local authority or government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation work are exempt from Service tax.

Definition of government authority is provided in clause (s) of paragraph 2 of the said notification. Definition of government was amended with effect from 30.01.2014 by virtue of Notification No. 02/2014-St.

As per the amended definition, “government authority” means an authority or a board or any other body:-

- a) set up by an Act of Parliament or a State Legislature; or
- b) established by government

With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

Hence w.e.f. 30.1.2014, even the authorities set up by the Government not necessarily by an Act of Parliament or state legislature covered under the definition of Government authority. Thus by virtue of said amendment in the definition of government authority, provision of said services to entities set up by Government are exempt w.e.f. 30.01.2014. However the services prior to 30.01.2014 remained taxable.

Now by Union Budget 2016, new section 101 is being inserted to propose to extend the benefit of exemption to the said services provided during the period from the 1st July, 2012 to 29.01.2014.

Also the refund of Service tax paid on the said services during the period from the 1ST July, 2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date on which Finance Bill, 2016 receives the assent of the President.

D.14. Restoration of exemption from Service Tax w.e.f. 1st March 2016;

Section 102 and 103 has been inserted in the Finance Act 1994 in order to restore the exemption that was earlier withdrawn. Following exemption has been restored under the service tax namely:-

- A) 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) 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, (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 clause (44) of section 65 B of the said Act.
- B) Services provided by way of construction, erection, commissioning or installation of original works pertaining to an airport or port.

The aforementioned exemptions are available subject to the conditions that the given contract had been entered prior to the 1st March 2015 and on which stamp duty had been paid prior to such date. However, the benefit of above exemption has been restricted to 31.03.2020.

Further exemption provided during the period from 1.04.2015 to 29.02.2016 to have also been proposed to be exempted from service tax for which refund application shall be filed within six months from the date of receipt of assent of the bill.

D.15. Indirect Tax Dispute Resolution Scheme, 2016

Indirect Tax Dispute Resolution Scheme, 2016 will be applicable for assesses whose cases are pending before Commissioner (Appeals) on or before 01-03-2016. This scheme shall be applicable for Central Excise, Custom and Service Tax assesses also.

As per above scheme, proceeding against the persons will be closed if they have filed the declaration and has paid the duty, interest applicable thereon and penalty equivalent to 25% of the duty. He will also get the immunity from the prosecution. However, above scheme will not be applicable on certain specified cases which are as follows:

- If order is in respect of search and seizure proceedings; or
- Prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or
- If order is in respect of narcotics drugs or other prohibited goods; or
- If order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
- Any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.