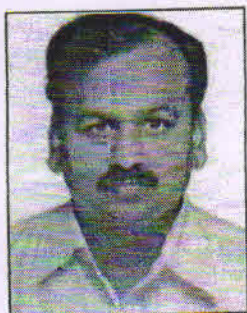


Negative impact discerned in Union Budget on Tourism Sector



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Introduction

1. Budget, 2016 has brought about a couple of changes with respect to the tourism sector. In this article amendments related to taxable services of tour operators services, rent-a-cab services and stage carriages have been discussed.

Tour operator - Existing provisions

2. Entry Serial No. 11 of the Notification No. 26/2012-ST, dated 20-6-2012 reads as follows:-

| | | | |
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| 11 | Services by a tour operator in relation to,- (i) a package tour | 25 | (i) CENVAT credit on inputs, capital goods and input services (other than the input service of a tour operator), used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour. |
| | (ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour | 10 | (i) CENVAT credit on inputs, capital goods and input services (other than the input service of a tour operator), used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation. |

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| (iii) any services other than specified at (i) and (ii) above. | 40 | <p>(i) CENVAT credit on inputs, capital goods and input services (other, than, the input, service of a tour operator), used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.</p> <p>(ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.</p> |
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For the purpose of above entry the term "package tour" would mean a tour wherein transportation, accommodation for stay; food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,

Tour operator's services amendments made to relevant provisions

3. The above entry has been substituted by the following entry vide Notification No. 08/2016-ST, dated 1-3-2016. The same will be effective from 1-4-2016. The new entry reads as follows:-

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| <p>9 Services by a tour operator in relation to-</p> <p>(i) a tour, only for the purpose of arranging or</p> <p>Booking accommodation for any person</p> | 10 | <p>(i) CENVAT credit on inputs, capital goods and input services, other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CCR;</p> <p>(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation;</p> <p>(iii) This exemption shall not apply in such cases where the invoice, bill</p> |
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| | | |
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| | | <p>or challan issued by the tour operator, in relation to a tour, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.</p> |
| (ii) Tours, other than (i) above | 30 | <p>(i) CENVAT credit on inputs, capital goods and input services, other than input services of a tour operator, used for providing the taxable service, has not been taken under the provisions of the CCR;</p> <p>(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour and the amount charged in the bill is the gross amount charged for such a tour.</p> |

3.1 Analysis of the amendment: The analysis of the above abatement makes it clear that the Abatement rates in relation to tour operators, other than those providing services solely for arranging or booking accommodation are being rationalized from 75%/60% to 70%. Since separate abatement for package tour is being done away with, definition of "package tour" is omitted. Also, a condition has specifically been imposed which states that the exemption of 90% value shall not apply in such cases where the invoice only includes commission, but does not include the cost of accommodation so arranged.

This condition seems to have been inserted after the recent litigation in the case of Make My Trip Company. The director of the Make My Trip Company was arrested on the alleged grounds of non-payment of service tax to the extent of 82 crores. In this case Make My Trip had claimed the abatement of 90% only on the commission earned by it from the hotels which was disputed by department alleging that the abatement is

allowable only if the rent of accommodation so booked by it along with the commission earned is included in the gross value. The above stated condition will put an end to the litigations like this.

Rent-a-cab services – Now & after

4. Notification No. 26/2012-ST, dated 20-6-2012 allows the abatement of 60% on the gross value of renting of motor cab on the grounds that no Cenvat credit is availed. Notification No. 8/2016-ST, dated 1-3-2016 has been issued to insert an *Explanation* BA in the Notification No. 26/2012-ST to clarify that for the purpose of computing abatement available for renting of motor cab services, the cost of all goods (including fuel) and services supplied by the recipient should be included in the consideration charged for providing renting of motor-cab services. The value (of such goods, including fuel and services supplied by the service recipient) is required to be determined in terms of the generally accepted accounting principles. This amendment may be a result of recent cases wherein the department had been constantly denying the benefit of abatement in absence of inclusion of value of fuel. The amending notification is applicable w.e.f. 1-4-2016.

Stage carriages – Now & after

5. At present, exemption is available to stage carriages under negative list under section 66D(o) as follows:-

*“(o) service of transportation of passengers, with or without accompanied belongings, by
(i) a stage carriage”*

This entry is proposed to be omitted from the negative list w.e.f. 1-6-2016. The effect of this omission would be that services provided by stage carriages will be taxable, unless some other exemption is provided.

In this regard mega exemption notification is also amended and a new clause (bb) is to be inserted in Entry No. 23(b) w.e.f. 1-6-2016. Entry No. 23 exempts the transport of passengers, with or without accompanied belongings by specified vehicles. The new clause is inserted as follows:-

“(bb) stage carriage other than air conditioned stage carriage”

Thus, from 1-6-2016, the exemption is continued on transportation of passengers in non-airconditioned stage carriages. Therefore, from 1-6-2016; the services provided by air conditioned stage carriages have been brought under service tax net.

Since the service tax has been made applicable on the AC stage carriages, benefit of abatement has also been extended by amending the Notification No. 26/2012-ST. This amendment would be applicable w.e.f. 1-6-2016 and thereafter abatement of 60% has been made applicable to the stage carriages, subject to the condition that Cenvat credit facility is not availed.

Concluding Remarks

6. The Budget, 2016 is said to have affected tourism sector at large by way of some significant amendments, most of which are of clarificatory nature that will avoid future litigations. There have been cases where the abatement had been claimed by rent-a-cab operators even in cases where the fuel cost was borne by the service recipient. Also, Make my trip case seems to be the reason of the clarification given by this Budget regarding the inclusion of accommodation charges in the taxable value for the purpose of claiming abatement. The tax liability has been imposed on the AC stage carriages w.e.f. 1.6.2016. Thus, overall the amendments made by the Budget, 2016 seem to be harsh on the pocket of service providers related to tourism sector.