



CA.PRADEEP JAIN

### PROFILE

- A practicing Chartered Accountant, practicing in indirect taxation laws- Central Excise, Customs, Service Tax and DGFT since 1994; having head office at Jodhpur and Branch Office at Ahmedabad.
- Founder of the website:- [www.new.capradeepjain.com](http://www.new.capradeepjain.com), updating various professionals, assesseees and students with latest amendments in Central Excise, Customs, Service Tax and DGFT. The website also releases a weekly newsletter summarizing the news relating to indirect taxation along with recent case laws and amendments.
- Affiliated with a number of associations pertaining to trade and industry like-
  - Jodhpur Industries Association, Jodhpur
  - Marudhara Industries Association, Jodhpur
  - Jodhpur Roller Bearing Association, Jodhpur
  - All India Hand Processors Associations, Jodhpur
  - Rajasthan Textile Processors Association, Pali
  - All India Umbrella Manufacturers Association, Falna
  - Rajasthan Plastic Association, Jodhpur
  - Jalore Granites Association, Jalore
  - Falna Udyog Mandal, Falna
  - Gujarat Plastic Association
- Regular writer on various issues pertaining to indirect taxation. Articles written have been published on renowned websites such as [taxindiaonline.com](http://taxindiaonline.com), [caclubindia.com](http://caclubindia.com), [taxguru.com](http://taxguru.com), [taxmanagement.com](http://taxmanagement.com), [caalley.com](http://caalley.com), [expertimile.com](http://expertimile.com) etc. Has been nominated as 'Featured Member' on the board of famous taxation website- [www.caclubindia.com](http://www.caclubindia.com). Various articles have also been published in print media and in eminent fortnightly journals like Excise Law Times, Service Tax Review, Corporate Law Advisors.
- Prominent speaker in various seminars held on indirect taxation during budget. Addressed various seminars of ICAI chapter, has been faculty for residential courses held by ICAI.



**SERVICE TAX 2016**

**CA.PRADEEP JAIN**

**AMENDMENT IN NEGATIVE LIST-SECTION 66D:-**

- One of the exceptions to the exemption with respect to services provided by government or local authority was 'support services'. However, w.e.f. 01.04.2016, 'support services' is substituted as 'any service' thereby meaning that any service not covered under negative list or mega exemption notification, except the services of Posts, aircraft/vessel, transportation of goods or passengers by government or local authority will be leviable to service tax under reverse charge mechanism.
- The clause (l) pertaining to exemption to services of pre-school education and education upto higher secondary school, education for obtaining qualification recognised by law and education as a part of approved vocational education course is deleted from negative list and added in Mega Exemption Notification.
- Exemption to service of transportation of passengers by a stage carriage is withdrawn w.e.f. 01.06.2016. The transportation service by air conditioned stage carriage is taxed at the same abatement rate of 60% applicable to contract carriage subject to condition of non-availment of cenvat credit. The non-ac stage carriage is exempted in Mega Exemption Notification.
- Exemption to transportation of goods by an aircraft or vessel from a place outside India upto customs station of clearance is withdrawn w.e.f. 01.06.2016. However, such services provided by aircraft continued to be exempted by Mega Exemption Notification. The transportation services availed by foreign shipping lines will be taxable under reverse charge mechanism. Consequential amendments made in Cenvat Credit Rules, 2004 to allow cenvat credit to service providers engaged in transportation of goods by vessel.

For more details, our article may be viewed at <http://new.capradeepjain.com/artleview/import-of-goods-by-vessel-budget-2016-made-it-257>

**DECLARED SERVICES-SECTION 66E**

Assignment by the government of the right to use the radio-frequency spectrum and subsequent transfers thereof is leviable to service tax w.e.f. 14.05.2016.

Karnataka High Court decision in **BHARTI AIRTEL LTD VS. STATE OF KARNATAKA [2012 (25) STR 514 (KAR)]**: It was held that energy / waves used by telecom service providers as a carrier for data / information through optical fibre cable broadband lines



would not constitute 'goods', and that such transactions would accordingly attract Service Tax and not VAT.

**CONTRADICTION IN SECTION 67A AND POINT OF TAXATION RULES, 2011 REMOVED:-**

- The rate of service tax to be applied is determined according to the Point of Taxation Rules, 2011. However, the provisions contained in Point of Taxation Rules specify three parameters for determining the point at which service tax is payable being date of receipt of payment, issue of invoice and provision of service.
- For example- as per Rule 4 of the Point of Taxation Rules, in case of change in effective rate of service tax, the occurrence of any two events out of three events will determine the rate of service tax. Consequently, if the date of issue of invoice and date of receipt of payment for the service is after the date on which rate of service tax is revised, the revised rate of service tax is applicable even if the service has been provided before the date of change in rate of service tax. This leads to deviation with the provisions of section 67A which provides that the service tax is payable at the rate when the taxable service has been provided.
- In order to remove the contradiction in the provisions of section 67A of the Finance Act and the provisions of Point of Taxation Rules, 2011, sub-section (2) has been inserted in section 67A which states that '*the time or the point in time with respect to rate of service tax shall be such as may be prescribed.*'

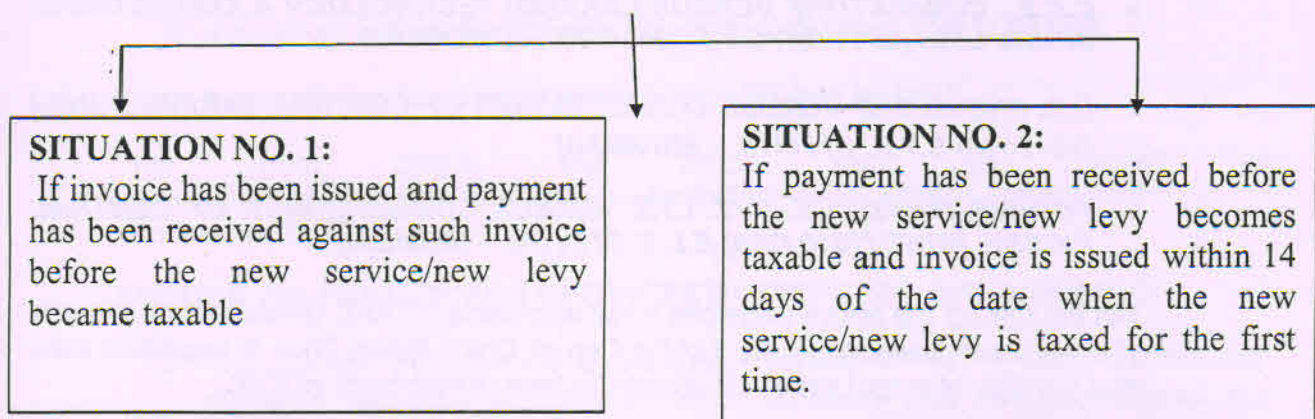
**RULE 5 OF POINT OF TAXATION ALSO MADE APPLICABLE FOR NEW LEVY OF SERVICE TAX:-**

- Rule 5 specifies point of taxation of 'new services' which have been made taxable for the first time from a particular date.
- Rule 4 specifies point of taxation in case of change in effective rate of service tax.
- Swachh Bharat Cess and Krishi Kalyan Cess are levied on the taxable value of services. The provisions of abatement, reverse charge mechanism etc. also apply for these cesses.
- Confusion arose as to which Rule of Point of Taxation is applicable for determining Point of Taxation for Swachh Bharat Cess and Krishi Kalyan Cess levied for the first time.



- Explanation no. 1 has been added in Rule 5 of the Point of Taxation Rules, 2011 w.e.f. 01.03.2016 wherein it is specified that this rule shall apply in case of new levy on services also.
- Explanation no. 2 has been added to state that new levy or tax shall be payable on all the cases other than specified in Rule 5.

No tax is payable under Rule 5 in following 2 situations:-



#### KRISHI KALYAN CESS (KKC):-

- Krishi Kalyan Cess (KKC) at the rate of 0.5% is being imposed on all taxable services with effect from 01.06.2016 on all taxable services.
- It is not leviable on exempted services or services on which no service tax is payable.
- Objective of KKC is to promote agricultural activities.
- Separate accounting code for KKC
- Only a provider of output service shall be allowed to take cenvat credit of KKC.
- No other duty can be utilised for payment of KKC.
- Credit of KKC can be utilised for payment of KKC only.



- Ambiguity regarding credit availment of KKC by manufacturer cum service provider.
- Legitimately earned cenvat credit is available as a 'common pool' and there is no one to one co-relation required for utilisation of cenvat credit earned in the capacity of manufacturer towards payment of service tax in the capacity of service provider. This has been held in the following cases:-
  - **COMMISSIONER OF C. EX., SALEM VERSUS V. THANGAVEL & SONS (P) LTD. [2015 (37) S.T.R. 144 (TRI. – CHENNAI)]**
  - **C.C.E., COIMBATORE VERSUS LAKSHMI TECHNOLOGY & ENGINEERING INDUS. LTD. [2011 (23) S.T.R. 265 (TRI. – CHENNAI)]**
  - **S.S. ENGINEERS VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE-I [2015 (38) S.T.R. 614 (TRI. – MUMBAI)]**
  - **FORBES MARSHALL PVT. LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE, PUNE [2010 (258) E.L.T. 571 (TRI. – MUMBAI)]**

But the ratio of the above decisions is not applicable for KKC because new sub-rule (1a) has been inserted in Rule 3 of the Cenvat Credit Rules, 2004 to expressly state that provider of output service is allowed to take cenvat credit of KKC.

- Confusion as regards application of the provisions of Rule 6 of Cenvat Credit Rules, 2004 on common input services availed by manufacturer-cum service provider.
- Rebate of KKC under Rule 18 of Central Excise Rules, 2002 is not available but rebate of KKC on export of services is admissible.
- Rule 5 of Point of Taxation Rules, 2011 applicable to KKC as it is new levy implemented w.e.f. 01.06.2016.

For more details, our article may be viewed at [http://new.capradeepjain.com/redirect\\_gal\\_436](http://new.capradeepjain.com/redirect_gal_436)

#### **SECTION 73- RECOVERY OF SERVICE TAX NOT LEVIED OR PAID OR SHORT LEVIED OR SHORT PAID OR ERRONEOUSLY REFUNDED:-**

- This section deals with issuance of show cause notice for recovery of service tax short paid or not paid.
- There are different time limits for issuing show cause notices in genuine cases and in fraud cases.



- The time limit to issue show cause notice when the short payment is due to inadvertent error was eighteen months from the relevant date, commonly called as normal period of limitation. The time limit has been increased to thirty months.
- The time limit to issue show cause notice when short payment is due to fraud continues to be 5 years from relevant date.
- Relevant date means-
  - (i) If return is filed, then date of filing of return.
  - (ii) If no return is filed, the last date on which such return was to be filed.
  - (iii) In any other case, date on which service tax is to be paid.

For more details, our article may be viewed at <http://new.capradeepjain.com/artview/limitation-for-issuing-scn-under-section-73-enhanced-261>

#### **SECTION 78A PENALTY FOR OFFENCES BY DIRECTOR, MANAGER ETC.**

- This section provides for a maximum penalty of Rs. 1 Lakh on director, manager, secretary or other officer of company who has contravened the provisions of Service Tax Laws like service tax evasion, wrong availment of credit etc.
- Section 76 prescribing penalty in case of non-payment of service tax for reasons other than fraud and Section 78 prescribing penalty in case of frauds have the option to conclude the proceedings.
- If a defaulter company has availed the option of reduced penalties under section 76/78 and has concluded the proceedings, then the penalties proposed on the officers of such company will also be deemed to have been concluded.

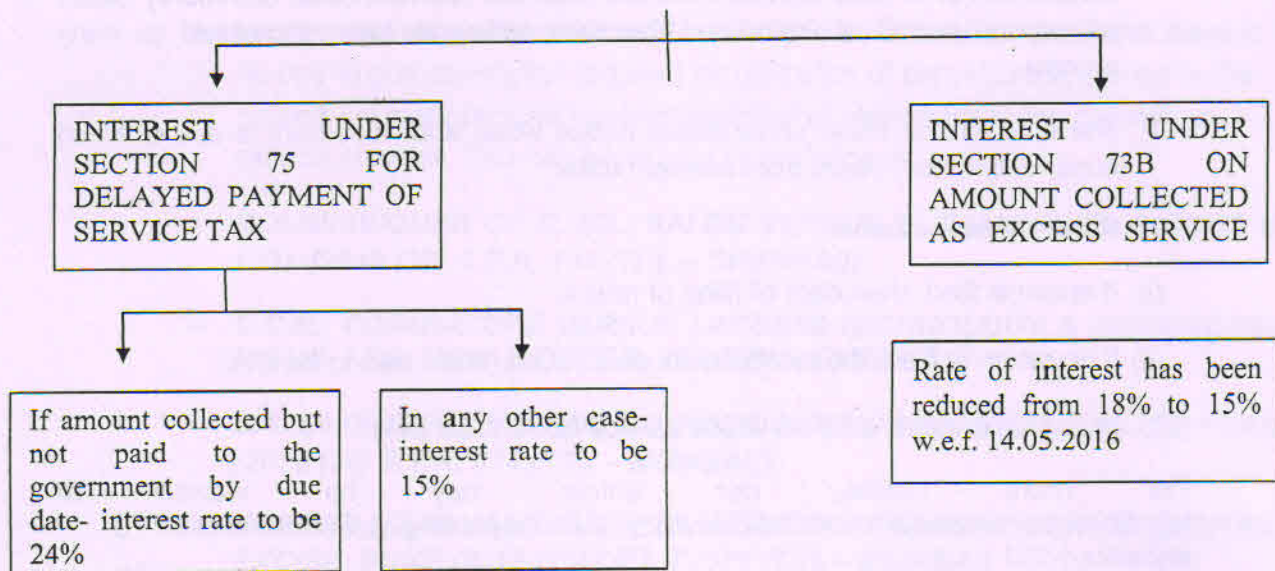
For more details, our article may be viewed at <https://www.taxmann.com/Budget-2016-17/budget/t167/deemed-conclusion-under-section-78a-welcome-provision.aspx>

#### **SECTION 90/91-POWER TO ARREST**

- The power to arrest in service tax law is restricted to situation where the tax payer has collected the tax but not deposited it with the exchequer and the amount of such tax collected but not paid is above Rs. 2 Crores w.e.f. 14.05.2016. Earlier, the amount of tax collected and not paid was specified as Rs. 50 Lakhs.



### AMENDMENTS IN INTEREST RATES IN SERVICE TAX



- In case of service provider, whose taxable value of services provided in a financial year does not exceed sixty lakhs rupees during any of the financial years covered by the notice or during the last preceding financial year, interest rate will be reduced by 3%.
- Discriminatory rates in case of service tax collected under section 75 and 73B is not understandable and will invite litigation.
- Rate of interest to be applied in cases where 'cum-tax' benefit extended will also be matter of dispute.

For more details, our article may be visited at <https://www.taxmann.com/budget-2016-17/budget/t198/different-interest-rates-for-similar-contravention.aspx>

#### RETROSPECTIVE AMENDMENT FOR SERVICE TAX REFUND TO EXPORTERS:-

- Notification no. 41/2012-ST dated 29.06.2012 grants refund of service tax paid on specified services in or in relation to manufacture of goods which are exported. The meaning of specified services given in the notification is '*taxable services that have been used beyond the place of removal, for the export of said goods*'.



- Circular no. 999/96/2015-CX dated 28.02.2015 clarified that in case of exports, place of removal is the port of export as property in goods transfers at the time of filing shipping bill at the port by the manufacturer exporter.
- The revenue authorities denied refund claims to the exporters by placing reliance on the above mentioned circular that since the notification grants refund of services availed beyond place of removal, the refund of service tax paid on services availed from factory gate to the port of export are not admissible under the said notification.
- Representations were made by exporters to amend the notification or issue a suitable clarification so as to enable them to claim refund of service tax.
- Thereafter, Notification No. 01/2016-ST dated 03.03.2016 wherein the meaning of specified services in the notification no. 41/2012-ST dated 29.06.2012 was substituted as *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.*
- However, since the notification no. 01/2016-ST was implemented w.e.f. 03.03.2016, refund claims were being denied for the period from 01.07.2012 to 02.03.2016.
- Consequently, retrospective amendment has been made vide section 160 of the Finance Act, 2016 enacted with effect from 14.05.2016. The Tenth Schedule specifying section 160 of the Finance Act, 2016 clearly states that the amendment made in the notification no. 41/2012-ST dated 29.06.2016 which substitutes the explanation A(i) as "*In the 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*" shall be deemed to have been implemented from 1<sup>st</sup> July, 2012 to 2<sup>nd</sup> February, 2016 (both days inclusive).
- Time period of one month from the date of enactment of Finance Act, 2016 has been allowed to exporters to file request letter in this regard.

For more details, our article may be viewed at  
[http://new.capradeepjain.com/redirect\\_gal\\_437](http://new.capradeepjain.com/redirect_gal_437)





**AMENDMENTS IN MEGA EXEMPTION NOTIFICATION:-**

**LEGAL SERVICES PROVIDED BY AN ADVOCATE/PARTNERSHIP FIRM OF ADVOCATES:-**

Prior to 01.04.2016, there was no distinction between advocate and senior advocate. The entry no. 6(b) of the Mega Exemption Notification provided exemption to legal services provided by an individual as an advocate or a partnership firm of advocates, when provided to following service recipients:-

- (i) An advocate or partnership firm of advocates providing legal services;
- (ii) Any person other than business entity; or
- (iii) A business entity with a turnover upto rupees ten lakhs in the preceding financial year.

Furthermore, service tax on legal services provided by an advocate or partnership firm of advocates was taxable under reverse charge mechanism wherein 100% service tax was payable by the business entity receiving such service.

However, w.e.f. 01.04.2016, the above provision was substituted so as to make a distinction between advocates and senior advocates. The amendment had the effect of removing senior advocate from the exemption as stated above. Furthermore, forward charge was made applicable for services provided by senior advocates. The exemption with respect to senior advocates was restricted to legal services provided by a senior advocate to any person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

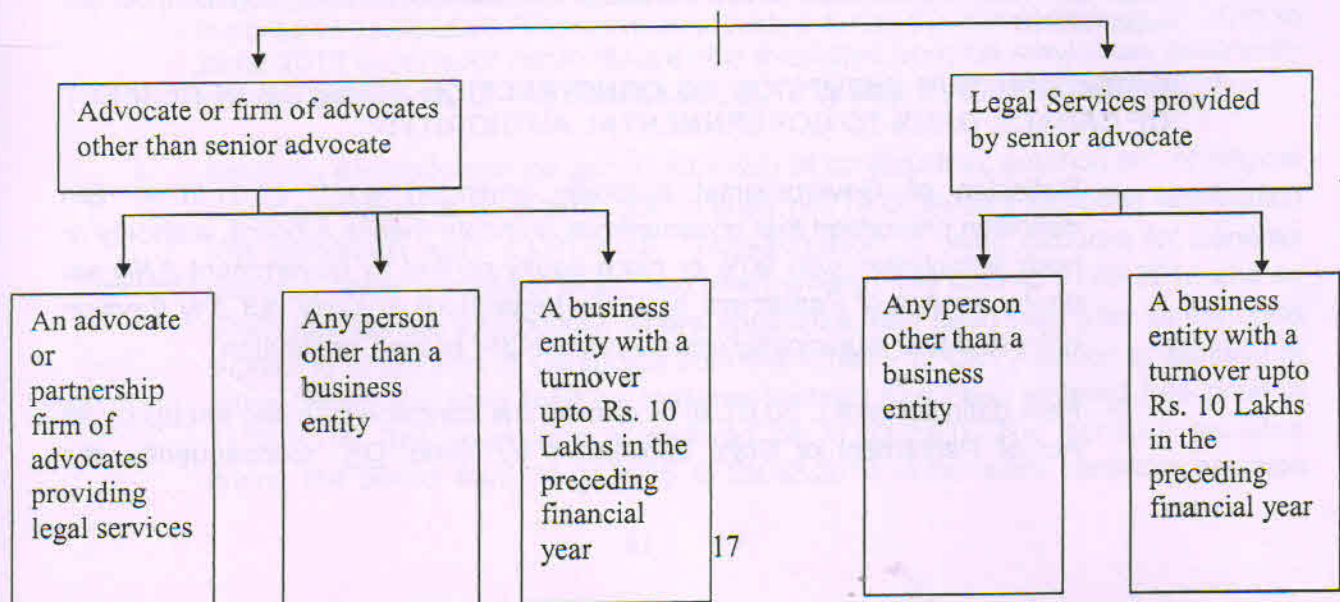
But, the government vide Notification no. 32/2016-ST dated 06.06.2016 has again amended the exemption pertaining to legal services provided by senior advocates so as to provide exemption to legal services provided by senior advocate to any person other than business entity or a business entity with a turnover upto ten lakhs in the preceding financial year.



The entire set of amendments is tabulated for easy understanding as follows:-

PARTICULARS	UPTO 31.03.2016	01.04.2016 TO 05.06.2016	06.06.2016 ONWARDS
Senior advocate providing legal services to person other than business entity	Exempt	Exempt	Exempt
Senior Advocate providing legal services to business entity with turnover upto 10 lakhs previous financial year	Exempt	Taxable under forward charge	Exempt
Senior Advocate providing legal services to business entity with turnover exceeding 10 lakhs previous financial year	Taxable under reverse charge mechanism	Taxable under forward charge	Taxable under reverse charge mechanism
To other advocates or partnership firm of advocates	Exempt	Taxable under forward charge	Taxable under reverse charge mechanism

The legal services that are now exempt are as follows:-





- The Notification no. 30/2012-ST dated 20.06.2012 has been issued to specify services for which reverse charge/partial reverse charge mechanism is applicable. Amendment is also made in the said notification with respect to legal services provided by advocates.
- The services provided by an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates have been specified as services on which reverse charge mechanism would apply.
- The representational services provided or agreed to be provided by a senior advocate before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant or petitioner, as the case may be.
- Furthermore, 100% service tax is liable to be paid by person other than service provider in respect of services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly.
- Explanation to the notification states that the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

For more details, our article may be viewed at [http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews\\_detail.php3&newsid=26301](http://www.taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=26301)

#### **RETROSPECTIVE EXEMPTION TO CONSTRUCTION SERVICES IN RESPECT OF CANALS, DAMS TO GOVERNMENTAL AUTHORITY:-**

- Definition of Governmental Authority amended w.e.f. 30.01.2014. Old definition prescribed that governmental authority means a board, authority or body established with 90% or more equity control by government **AND** set up by an Act of Parliament or State Legislature to carry out any function entrusted to a municipality under Article 243W of the Constitution.
- New definition w.e.f. 30.01.2014 relaxed the condition of being set up by an Act of Parliament or State Legislature by using '**OR**'. Consequently, the



services of construction, repair, maintenance services of dams, canals etc. provided to governmental authority not being set up by Act of Parliament were being treated as taxable services. Hence, government provided retrospective exemption to such services provided to governmental authority from 01.07.2012 to 29.01.2014.

- Provision of refund of service tax, if paid on such services also incorporated.

#### **RESTORATION OF EXEMPTION TO ON-GOING PROJECTS FOR WHICH EXEMPTION WITHDRAWN:-**

- Clauses (a), (c) and (f) of Entry no. 12 were omitted with effect from 01.04.2015. The said clauses were for *services provided to the government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of-*
  - (a) *A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.*
  - (b) *a structure predominantly meant for use as an educational, a clinical or an art or cultural establishment.*
  - (f) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation I to clause (44) of section 65B of the said Act.*

The said exemption 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. The exemption is being restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also exempted from the service tax vide newly inserted section 102 of The Finance Act, 2016 by way of retrospective exemption.

- Similarly, exemption on the services by way of construction, erection etc. of original works pertaining to an airport, port in entry no. 14 of Mega Exemption Notification was withdrawn w.e.f. 01.01.2015. This exemption is being restored for 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 restored till 31.03.2020. The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also



exempted from the service tax vide newly inserted section 103 of The Finance Act, 2016 by way of retrospective exemption.

**EXEMPTIONS WITHDRAWN FROM MEGA EXEMPTION NOTIFICATION:-**

- Exemption provided on transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn from 01.04.2016.
- Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro is being withdrawn in respect of contracts entered into on or after 01.03.2016.

**NEW EXEMPTIONS TO MEGA EXEMPTION NOTIFICATION:-**

- The services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India is being exempt from service tax. (w.e.f. 01.04.2016)
- Services provided by SEBI by way of protecting the interests of the investors in securities and to promote the development of, and to regulate, the securities market are being exempt from service tax. (w.e.f. 01.04.2016)
- Services provided by Employee's Provident Fund Organisation to employees are being exempted from service tax. (w.e.f. 01.04.2016)
- Services provided by National Centre for Cold Chain Development under Department of Agriculture, GOI by way of knowledge dissemination is being exempted. (w.e.f. 01.04.2016)
- Services provided by IRDA of India are being exempt. (w.e.f. 01.04.2016)
- 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 1.5 Lakh per performance. (w.e.f. 01.04.2016)
- Services provided by way of construction, erection etc. of original works pertaining to low cost houses upto a carpet area of 60 sq. mtr 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. (w.e.f. 01.04.2016)



- Services provided by the IIM by way of 2 year full time PGPM wherein admissions are made through CAT conducted by IIMs, 5 year Integrated Programme in Management and Fellowship programme in Management are being exempt. (w.e.f. 01.04.2016)

#### **INFORMATION TECHNOLOGY SOFTWARE:-**

- There is confusion as regards levability of service tax on development of software.
- Supreme Court in the case of *Tata Consultancy Services [2004 (178) E.L.T. 22 (S.C.)]* has held that software is goods and is leviable to sales tax.
- The sub-section (d) of Section 66E pertaining to Declared Services covers development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software as a taxable service.
- This lead to software being treated as goods as well as deemed service.
- Recorded Information Technology Software has been notified under section 4A of the Central Excise Act, 1944 and is subject to MRP based valuation. Consequently, excise duty is being paid on RSP of the packaged software.
- The government has provided excise duty exemption to so much value of the Information Technology Software which is leviable to service tax provided the manufacturer of the software gives undertaking that service tax has been paid on so much value under Service Tax Laws.
- Similar exemption is given for CVD leviable on import of information technology software on which MRP assessment is done. The exemption is from levy of CVD on the value of software on which service tax has been paid.
- This resolves the problem of double taxation and makes the levy of Central Excise Duty/CVD and Service Tax as mutually exclusive.

**ABATEMENT UNDER NOTIFICATION NO. 26/2012-ST:-**

S.No.	Description of taxable service	Taxable %	Conditions
1.	Services in relation to financial leasing including hire purchase	10%	Nil
2.	Transport of goods by rail by Indian Railways (w.e.f. 01.04.2016)	30%	Credit on inputs & capital goods used for providing the taxable service is not taken.
2A	Transport of goods in containers by rail by any person other than Indian Railways (w.e.f. 01.04.2016)	40%	Credit on inputs & capital goods used for providing the taxable service is not taken.
3.	Transport of passengers with or without accompanied belongings by rail	30%	Credit on inputs & capital goods used for providing the taxable service is not taken
4.	Mandap Keeper Services with both renting of premises along with supply of food	70%	Credit on goods covered under chapter 1 to 22 of Central Excise Tariff Act, 1985 is not taken.
5.	Transport of passengers by air, with or without accompanied belongings in (i) Economy class  (ii) Other than Economy class	40% 60%	Credit on inputs & capital goods used for providing the taxable service is not taken
6.	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	60%	Credit on inputs & capital goods used for providing the taxable service is not taken
7.	Services of GTA in relation to transportation of goods other than used household goods (w.e.f. 01.04.2016)	30%	Credit on inputs, capital goods and input services used for providing the taxable service has not been taken by service provider
7A.	Services of GTA in relation to transportation of used household goods	40%	Credit on inputs, capital goods and input services used for providing the taxable service has not been taken by service provider



8.	Services provided by a foreman of Chit Fund in relation to Chit	70%	Credit on inputs, capital goods and input services used for providing the taxable service has not been taken
9.	Renting of motorcab {Cost of fuel to be included in the value of service}	40%	(i) Credit on inputs and capital goods used for providing taxable service is not taken.  (ii) Credit on input service of renting of motorcab has been taken as follows:-  (a) Full credit of such input service received from a person who is paying service tax on 40% of the value; or  (b) Upto 40% credit of input service received from a person who is paying service tax on full value.  (iii) Credit on input services other than renting of motor cab has not been taken.
9A	Transport of passengers with or without accompanied belongings by- (a) A contract carriage other than motorcab  (b) A radio taxi  (c) A stage carriage. (01.06.2016)	40%	Credit on inputs, capital goods and input services used for providing the taxable service has not been taken
10.	Transport of goods in a vessel	30%	Credit of inputs and capital goods used for providing taxable service is not taken.





11.	Services by a tour operator in relation to- (i) A tour only for the purpose of arranging or booking accommodation for any person	10%	(i) Credit on inputs, capital goods and input services other than input services of a tour operator, used for providing taxable service is not taken.  (ii) The invoice, bill or challan issued indicates that it is 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, includes only the service charges for arranging or booking accommodation for any person but does not include the cost of such accommodation.
11A.	(ii) Tours other than (i) above	30%	(i) Credit on inputs, capital goods and input services other than input services of a tour operator, used for providing taxable service is not taken.  (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.
12.	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partially except where the entire consideration is received after issuance of completion certificate by the competent authority.	30%	(i) Credit of inputs used for providing the taxable service is not taken.  (ii) The value of land is included in the amount charged from the service receiver.

The changes made in abatements are effective from 01.04.2016.

#### **REVERSE CHARGE MECHANISM:-**

- The reverse charge mechanism applicable for services provided by mutual fund distributors/agents wherein the Asset Management company was liable to pay service tax is being withdrawn. Now, Mutual fund agents will be liable to pay service tax under forward charge. (w.e.f. 01.04.2016)
- Any service provided by government or local authority except that of post, aircraft/vessel, or transportation of goods or passengers will be leviable to service tax under reverse charge mechanism w.e.f. 01.04.2016. Earlier, only support services were leviable to service tax under reverse charge mechanism.
- The reverse charge mechanism for legal services provided by lawyers has been already discussed above.

#### **AMENDMENTS IN SERVICE TAX RULES, 1994:-**

- One Person Company (OPC) under section 2(62) of the Companies Act, 2013 provided with benefit of quarterly payment of service tax. Further, benefit of payment of service tax on 'receipt basis' available if the value of services provided by OPC is upto Rs. 50 Lakhs in the previous financial year.
- Benefit of quarterly payment of service tax is also extended to HUF.
- Service tax assessee are now required to file an annual return by 30th November of the succeeding financial year to which the return relates. A revised return can be submitted within one month from the date of submission of the annual return. Penalty prescribed as INR 100 per day of delay in filing of return and subject to a maximum of INR 20,000.



**IMPORTANT RECENT JUDICIAL PRONOUNCEMENTS:-**

**1. MEGA CABS PVT. LTD. VERSUS UNION OF INDIA AND OTHERS [2016-TIOL-1061-HC-DEL-ST]:-**

- This decision declares new Rule 5A (2) of Service Tax Rules, introduced w.e.f. 05.12.2014 and Circular No. 995/2/2015-CX dated 27.02.2015 as ultra vires the Finance Act, 1994.
- The High Court held that the term 'verify' cannot be construed as wide enough to permit audit of the accounts of the assessee by any officer of the Service Tax Department.
- Audit is a special function which has to be carried out by duly qualified persons like a Chartered Accountant or a Cost Accountant.
- It is worth noting that the old Rule 5A(2) was also quashed by the Delhi High Court in the case of **TRAVELITE (INDIA) VERSUS UNION OF INDIA [2014 (35) S.T.R. 653 (DEL)]** on the ground that it lacks statutory backing. Thereafter, the government introduced a new clause (k) to section 94 vide Finance Act, 2014 w.e.f. 06.08.2014 to legitimise Rule 5A (2) of the Service Tax Rules, 1994 whereby it was stated that the Rule making power included power to verify the records of the assessee.
- However, even the new Rule 5A(2) has been quashed and declared as ultra-vires the Finance Act.

**2. SURESH KUMAR BANSAL VS UNION OF INDIA & OTHERS [2016-TIOL-1077-HC-DEL-ST]:-**

- No service tax leviable in case of flats sold to prospective buyers as the consideration includes value of land.
- The Parliament is fully competent to enact a legal fiction that service tax is payable if consideration received by builder before grant of completion certificate and treating it as construction service undertaken on behalf of prospective buyer. However, service tax cannot be levied on value of land as only State Government empowered to collect tax on land.
- Levy of service tax would fail if it does not provide mechanism to ascertain the value of service portion leviable to service tax. Service Tax (Determination of Value) Rules, 2006 do not have provision to deal with contracts which include land value.



- Since abatement notifications cannot substitute Act or Rules, and since there is no statutory machinery to ascertain the value of services involved in the composite contracts, no service tax is leviable.

### 3. *NVR FORGINGS VS UNION OF INDIA [2016-TIOL-1066-HC-P&H-CX]:-*

- Revision under section 35EE of the Central Excise Act, 1944 cannot be done by the officer of the same rank as that of Commissioner Appeals.
- The Joint Secretary to Government of India also being a Commissioner of Central Excise and the Commissioner (Appeals) also being Commissioner of Central Excise are of same rank. Consequently, the order of Commissioner (Appeals) cannot be reviewed by the Joint Secretary who is also of same rank.
- It is worth noting that provisions of section 35EE of the Central Excise Act, 1944 pertaining to rebate have been made applicable to Service Tax vide section 83 of the Finance Act.
- Section 86 has also been amended to provide that all appeals filed to the Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when Finance Bill, 2015 receives assent of President shall be transferred to revisionary authority.
- Due caution is to be exercised that the revision application filed under section 35EE is being considered by officer above the rank of officer in the Commissioner Appeals.

#### INDIRECT TAX DISPUTE RESOLUTION SCHEME-2016

Scope	Details
Applicability	Applies to any dispute in respect of the Customs Act or the CE Act or the chapter V of Finance Act, pending before the Commissioner (Appeals) as on March 01, 2016
Window for declaration	June 01, 2016 to December 31, 2016
Amount payable	Assessee shall be liable to pay tax / duty due along with applicable interest and penalty equivalent to 25% of penalty imposed in the impugned order which is under challenge before the Commissioner (Appeals)
Procedure	<ul style="list-style-type: none"><li>• The declaration is to be made to designated authority who is authorized by the Commissioner of Excise, Customs or service tax.</li><li>• The designated authority will acknowledge the declaration so made.</li></ul>



	<ul style="list-style-type: none"><li>• Tax dues declared are to be paid with interest and penalty equivalent to 25% of penalty imposed in the impugned order within 15 days of the receipt of acknowledgement of declaration.</li><li>• Intimation of payment of dues is also to be filed to the designated authority within seven days alongwith proof thereof.</li><li>• On receipt of proof of payment, the designated authority shall pass the order of discharge of dues within 15 days for concluding the proceeding covered under the declaration.</li></ul>
Amenity available under scheme	Declaration under this Scheme shall become conclusive upon issuance of an order and no matter relating to the impugned order shall be reopened. However, an order passed under the Scheme shall not be deemed to be an order on merits and will have no binding effect.
Scheme does not apply to certain Cases	The Scheme is not applicable in following cases: <ul style="list-style-type: none"><li>• Where impugned order is in respect of search and seizure proceedings;</li><li>• Prosecution for any offence has been instituted before June 01, 2016;</li><li>• Impugned order is in respect of narcotic drugs or prohibited goods or</li><li>• Impugned order is in respect of offences punishable under the Indian Penal Code (IPC), Prevention of Corruption Act, 1988 etc.</li></ul>

For more details, our article may be studied in Excise Law Times [2016. Vol-333. Page-A-166]