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Central Excise, Customs & Service Tax

HIGHLIGHTS OF CHANGES IN SERVICE TAX AS INTRODUCED BY FINANCE BILL 2008

The following changes have been made in the service tax in the wake of the Budget 2008.

1. Increase in the threshold exemption limit for Small Service Providers.

Small scale service providers have been given exemption up to annual turnover of Rs. 10 Lacs instead of Rs. 8 Lacs.

Commentary: Wherever the input service provider has a turnover less than Rs. 10 Lacs in the year 2008-09, no service tax is required to be paid to him.

2. Following services have been specifically included for levy of service tax.

- (i) Services provided in relation to information technology (IT) software for use in the course, or furtherance, of business or commerce [section 65(105)(zzzzz)].
- (ii) Services provided in relation to management of investment, known as segregated fund, under unit linked life insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme [section 65(105)(zzzzf)].
- (iii) Services provided by a recognized stock exchange in relation to securities [section 65(105)(zzzzg)].
- (iv) Services provided by a recognized association or a registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts [section 65(105)(zzzzh)].
- (v) Services provided by a processing and clearinghouse in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts [section 65(105)(zzzzi)].
- (vi) Services provided in relation to supply of tangible goods, without transferring right of possession and effective control of said tangible goods [section 65(105)(zzzzj)] and
- (vii) Services provided in relation to internet telecommunication [section 65(105)(zzzzk)].

Services provided in relation to internet telephony has been covered within the scope of the proposed service. Hence internet telephony service shall be omitted.

These changes will be effective from a notified date after the enactment of the Finance Bill.

Amendment of Existing Taxable Services.

Foreign Exchange Broker Service:

Foreign Exchange (Forex) broking service is leviable to service tax. Foreign exchange brokers provide services as an intermediary in relation to purchase or sale of foreign currency on a commission/brokerage basis. Purchase or sale of foreign currency is undertaken by foreign exchange broker and also by persons authorized under Foreign Exchange Management Act, 1999 to deal in foreign exchange and having license issued by RBI. Such authorized persons are known as money changers or authorized dealers of foreign exchange. Services in relation to purchase or sale of foreign currency is, therefore, provided by foreign exchange broker, money changer and also authorized dealer of foreign exchange.

Cargo Handling Service:

Section 65(23) which defines cargo handling service is being amended so as to include services of packing (packers and movers of goods) together with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking, under cargo handling service. With this amendment, packing with transportation will be classifiable under cargo handling service only.

Tour Operator Service:

Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist vehicles. With this

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amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator service.

Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit.

Business Auxiliary Service:

Services provided in relation to promotion or marketing of service provided by the client is leviable to service tax under business auxiliary service. Organization and selling of lotteries are globally treated as supply of service. Lotteries (Regulation) Act, 1998 enables State Governments to organize, conduct or promote lotteries. Lottery tickets are printed by the State governments and are sold through agents or distributors. Tickets are delivered by the State Government to the distributors at a discounted price as compared to the face value of the tickets. The CBEC is of the view that services provided by the distributors or agents in relation to promotion or marketing of lottery tickets are leviable to service tax under the existing business auxiliary service.

Renting of Immovable Property Service:

Use of immovable property is allowed for placing vending/ dispensing machines in malls and other commercial premises and erection of communication towers on buildings. In such cases, there may or may not be transfer of right of possession or control of the immovable property in favour of the person using such property.

Transactions between Associated Enterprises:

As an anti-avoidance measure, it is being clarified that service tax is leviable on taxable services provided by the person liable to pay service tax even if the amount is not actually received, but the amount is credited or debited in the books of account of the service provider. In other words, service tax is required to be paid after receipt of payment or crediting/debiting of the amount in the books of accounts, whichever is earlier. However, this provision is restricted to transaction between associated enterprises. This provision shall also apply to service tax payable under reverse charge method (Section 66A) as taxable services received from associated enterprises. For this purpose section 67 and rule 6(1) are being amended.

Exemptions from Levy of Service Tax (Effective from 01.03.2008).

- i) Taxable service provided by a person located outside India, in relation to booking of an accommodation in a hotel located in India for a customer located outside India, is being exempted from levy of service tax (Notification No.14/2008-ST dated 01.03.2008).
- ii) In the case of services provided for the transport of goods by road in a goods carriage, service tax is required to be paid by certain categories of persons who pay the freight instead of the service provider namely Goods Transport Agency. The actual amount of service tax payable is 25% of the amount of freight i.e. 75% of the amount of freight is provided as abatement, subject to the condition that no Cenvat credit of the duty paid has been availed of under Cenvat Credit Scheme. It has been represented that fulfillment of the condition of non-availment of Cenvat credit by the service provider is, at times, difficult to prove, when the service tax is required to be paid not by the service provider but by the consignor or consignee who pays the freight. Taking into account the special nature of the goods transport agency (GTA) service, it is being exempted from the payment of service tax unconditionally to the extent of 75% of the freight. In other words, service tax is required to be paid only on 25% of the freight irrespective of who pays the service tax. Simultaneously, the benefit of Cenvat credit has been withdrawn to GTA service under Cenvat Credit scheme by deleting the said service from the scope of output service in the CENVAT Credit Rules, 2004. Henceforth, the person who is required to pay service tax under reverse charge method on GTA service can pay service tax on 25% of the freight unconditionally. Recipient of GTA service paying service tax under reverse charge method is no more required to prove non availment of CENVAT credit by the GTA service provider.

Proposed changes in the penal provisions (To be effective from a notified date after the enactment of the Finance Bill)

Penalty for delayed payment of service tax is levied under section 76. Penalty under section 78 is levied for failure to pay service tax on account of fraud, misdeclaration etc. Section 78 is being amended so as to provide that penalty for failure to pay service tax under section 76 shall not apply where penalty is leviable under section 78.

Section 77 is being amended so as to provide specific penalty for specific contraventions.

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Other proposed amendments (To be effective from a notified date after the enactment of the Finance Bill)

Replacement of "client" or "customer" with "any person": In number of taxable services, recipient of service is specified as "client" or "customer". Service tax is levied on services. Ordinarily, the status of recipient of service should not determine the tax treatment of a given service. 39 specified taxable services are being amended so as to substitute "any person" in place of "client" or "customer".

Section 66 is being amended so as to include seven newly specified services in the list of taxable services.

Amendments in the Service Tax Rules, 1994 (Effective from 01.03.2008).

Payment of Service Tax in Advance: Assessee having centralized registration is allowed to pay service tax in advance. However, such facility is not available for other categories of taxable persons. It is proposed to extend the facility to pay service tax in advance to all taxable persons subject to the condition that the details of advance payment should be intimated to the jurisdictional Superintendent of Central Excise within 15 days of such payment.

Service tax paid in advance is allowed to be adjusted against service tax liable to be paid for the subsequent period. It is sufficient to intimate the details of such adjustment in the periodical return to be filed. For this purpose, rule 6 (1A) is being incorporated.

Rule 6(4B)(iii) provides self-adjustment of excess amount of service tax paid in certain circumstances with a monetary limit of Rs.50,000/-. This rule is being amended to increase the said monetary limit from Rs.50,000/- to Rs.1,00,000/-

Rule 7B provides facility to file revised return to correct mistake or omission, within a period of 60 day from the date of submission of the return. This rule is being amended to increase the said time limit from 60 days to 90 days.

Rule 7C empowers the Central Excise Officer to reduce or waive the penalty for delayed filing of return, where the gross amount of service tax payable is nil.

Amendments in CENVAT Credit Rules, 2004:

Service tax payable on GTA service shall be only on 25% of the gross amount charged as freight. GTA service providers shall not be allowed to avail input credit under Cenvat Credit Scheme. Rule 2(p) is being amended so as to exclude goods transport agency service from the scope of "output service". **(Effective from 01.03.2008)**

Rule 3 is being amended to allow removal of capital goods outside the premises of the provider of output service without any time restriction, if the same is for providing output service. **(Effective from 01.04.2008)**

Rule 6 is being amended to provide the following options to a provider of output services, using common inputs or input services for providing taxable as well as exempted services and opting not to maintain separate accounts, namely:- **(Effective from 01.04.2008)**

- (i) either reverse the credit attributable (to be worked out in a manner prescribed in the rule) to the inputs and input services used for providing exempted service, or
- (ii) pay 8% amount of the value (to be determined in accordance with section 67 of the Finance Act, 1994) of the exempted service.

Rule 7A is being inserted to prescribe a procedure to enable the provider of output services to take credit on inputs and capital goods on the basis of an invoice, bill or challan issued by its other office. **(Effective from 01.04.2008)**

Rule 15A is being inserted to provide for general penalty up to Rs.5,000/- in case of contravention of any of the provisions of the CENVAT Credit Rules, 2004, for which no specific penal provision exists. **(Effective from 01.03.2008)**

Cross border Services relating to Tangible Goods: (Effective from 01.03.2008)

Information technology is used to provide services in relation to tangible goods located distantly. In such cases, the actual place of performance of the service is different from the actual location of the tangible goods (place of consumption of service). In such cases, the place of consumption will determine the jurisdiction of the event. Accordingly, if the place of consumption is outside India, it will be treated as export of service and if the place of consumption is India, then it will be treated as import of service for the following services.

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- (a) management, maintenance or repair,
- (b) technical testing and analysis, and
- (c) technical inspection and certification,

Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007: (Effective from 01.03.2008)

Service tax payable for works contract service under the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 is being increased from 2% to 4% of the total value of the works contract. Rule 3(1) of the said rules is being amended suitably.
