

Key Service Tax Budget Proposals and Amendments



Right advice at right time...

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1. Change in rate of Service tax

1.1 At present, Service tax is levied @ 12% vide Section 66B of the Finance Act, 1994. Further, Education Cess¹ and Secondary Higher Education Cess² are levied on Service tax, making the effective rate of tax to be 12.36%.



1.2 The rate of Service tax is proposed to be increased to 14% from a notified date after enactment of Finance Bill, 2015. Further, Education Cess³ and Secondary Higher Education Cess⁴ are proposed to be abolished from a notified date after enactment of Finance Bill, 2015.

2. Amendments to abatements

2.1 Service tax payable on transport services varies based on the mode of transport. Even conditions for availment of such abatement differ at present. The same have been amended to bring the parity amongst various modes of transportation. The existing provisions⁵ and amendments⁶ are tabulated hereunder:

¹ Section 95 of the Finance Act, 2004

² Section 140 of the Finance Act, 2007

³ Clause 179 of the Finance Bill, 2015

⁴ Clause 187 of the Finance Bill, 2015

⁵ Notification No. 26/2012-ST dated 20th June, 2012

⁶ Notification No. 8/2015-ST dated 1st March, 2015

Particulars	Existing Abatement Rate	Existing Conditions	Amended Abatement Rate	Amended Condition
Transport of goods or passengers by rail	70%	No conditions		
Transport of goods by road (GTA Services)	75%	CENVAT Credit on inputs, capital goods and input services, used for providing taxable service is not taken under CENVAT Credit Rules, 2004	70%	CENVAT Credit on inputs, capital goods and input services, used for providing taxable service is not taken under CENVAT Credit Rules, 2004
Transport of goods by vessel	60%	CENVAT Credit on inputs, capital goods and input services, used for providing taxable service is not taken under CENVAT Credit Rules, 2004		

2.2 At present, Service tax is payable on 40% of value for transport of passengers by air subject to non-availment of CENVAT Credit on inputs and capital goods. Now, with effect from 1st April, 2015, abatement is intact for economy class. However,

abatement is reduced for transport of passengers by higher class and Service tax would have to be paid on 60% of the value of taxable services in such cases.

3. Increase in Presumptive Taxation Rates

3.1 Consequent to upward revision of Basic Service tax Rate, presumptive rate of taxes would be increased from a notified date, on following services, as summarized hereunder:

Particulars	Existing presumptive Rate of Service tax	Presumptive Rate of Service tax from a notified date
Air travel agent's services for air travel tickets⁷:		
a) Domestic Bookings	0.6% of basic fare	0.7% of basic fare
b) International Bookings	1.2% of basic fare	1.4% of basic fare
Insurer carrying on life insurance business⁸ except where entire premium is towards risk cover in life insurance:		
a) If the amount allocated for investment or savings is intimated to policy holder while providing services	Gross amount charged from a policy holder (-) Amount allocated for investment or savings on behalf of policy holder i.e. margin	

⁷ Rule 6 (7) of Service tax Rules, 1994

⁸ Rule 6 (7A) of Service tax Rules, 1994

	earned by insurer	
b) All other cases:		
i. 1 st year	3% of premium charged	3.5% of premium charged
ii. Subsequent years	1.5% of premium charged	1.75% of premium charged
Purchase or sale of foreign currency including money changer⁹:		
a) Gross amount of currency exchanged for an amount upto Rs. 1,00,000/-	0.12% of such gross amount Or Rs. 30/-, Whichever is higher	0.14% of such gross amount Or Rs. 35/-, Whichever is higher
b) Gross amount of currency exchanged for an amount exceeding Rs. 1,00,000/- and upto Rs. 10,00,000/-	Rs. 120 (+) 0.06% of such gross amount	Rs. 140 (+) 0.07% of such gross amount
c) Gross amount of currency exchanged for an amount exceeding Rs. 10,00,000/-	Rs. 660 (+) 0.012% of such gross amount Or Rs. 6,000/-, Whichever is lower	Rs. 770 (+) 0.014% of such gross amount Or Rs. 7,000/-, Whichever is lower

⁹ Rule 6 (7B) of Service tax Rules, 1994

4. Introduction of additional 2% Swachh Bharat Cess

- 4.1 In order to finance and promote Swachh Bharat initiatives and other related purposes, Central Government has proposed to levy additional cess called as “Swachh Bharat Cess” as Service tax on all or any taxable services @ 2% on value of such services. This cess shall be levied from a notified date after enactment of Finance Bill, 2015.
- 4.2 Details of coverage of Swachh Bharat Cess may be notified in due course. Services, so notified, would be liable to effective rate of Service tax @ 16% as against the present rate of 12.36%.



5. Inclusion of reimbursable expenditure in value of taxable services

- 5.1 Currently, following provisions are prevailing for valuing taxable services:

Particulars	Value of taxable services
If the provision of service is for a consideration in money	Gross Amount Charged (GAC) by service provider for such services provided or to be provided
If the provision of service is for a consideration not wholly or partly consisting of money	Such money as is equivalent to consideration + Service tax charged
If consideration is not ascertainable	Amount to be determined as per Service tax (Determination of Value) Rules, 2006

- 5.2 The term “consideration” is defined to include any amount payable for the taxable services provided or to be provided. Further, vide Rule 5 (1) of Service tax (Determination of Value) Rules, 2006, all expenditure or costs incurred in the course of provision of service, are treated as consideration, includible in value for charging Service tax.
- 5.3 Delhi High Court in case of ***Intercontinental Consultants & Technocrats Pvt. Ltd. vs. Union of India 2013 (29) STR 9 (Del.), admitted in Supreme Court vide 2014 (35) STR J99 (SC)***, had struck down said Rule 5 (1) since it was *ultra vires* Section 67 of the Finance Act, 1994. Delhi High Court had observed that value of taxable services is Gross Amount Charged “for such service” vide Section 67 of the Finance Act, 1994 and therefore, expenditure are not includible in gross taxable value of services.
- 5.4 Taking shelter of intention of legislature, it is proposed that the Section defining the term “consideration” shall be modified as under from the date of enactment of Finance Bill, 2015:
- “(a) Consideration¹⁰ includes:
- ...
- (ii) **any reimbursable expenditure or cost** incurred by the service provider and charged, **in the course of** providing or agreeing to provide a taxable service, **except in such circumstances, and subject to such conditions, as may be prescribed**
- ...”
- 5.5 Further, Section 94 (2) (aa) of the Finance Act, 1994 has been incorporated to empower Central Government to prescribe Rules for the circumstances and conditions under which an amount shall not be considered to be “consideration”. The Rules may be notified on the enactment of Finance Bill, 2015.

¹⁰ Explanation (a) to Section 67 of the Finance Act, 1994

6. Amendments relating to entertainment events and amusement facilities

6.1 Currently, "admission to entertainment events or access to amusement facilities"¹¹ is covered under Negative List of Services and therefore, not liable to Service tax.

6.2 Vide Finance Bill, 2015, following amendments are proposed to be effective from a notified date after enactment of Finance Bill, 2015:

6.2.1 Service tax is proposed to be levied on services provided by way of access to amusement facility.

6.2.2 Following services, which are currently covered under negative list of services, are proposed to be covered by Exemption Notification¹²:

6.2.2.1 Complete exemption to services by way of right to admission to exhibition of cinematographic film, circus, dance or theatrical performance including drama or ballet;

6.2.2.2 Complete exemption to defined recognized sporting event;

6.2.2.3 Exemption for right to admissions to award function, concert, pageant, musical performance or any sporting event other than recognized sporting event, where the consideration for admission is not more than Rs. 500/- per person.

GSC Comments: Since taxes on amusements and entertainments are reserved for the States as per Entry 62 of List II of Seventh Schedule read with Article 246 of the Constitution of India, the Service tax levy on the same may not be free from litigation.

¹¹ Section 66D (j) of the Finance Act, 1994

¹² Notification No. 6/2015-ST dated 1st March, 2015

7. Amendments relating to Chit Funds

- 7.1 The definition of service¹³ specifically excludes an activity merely constituting a transaction in money or actionable claim from Service tax levy except activity relating to use or conversion of money for a consideration.
- 7.2 There was a debate whether the activity of foreman of chit fund is a transaction in money (and therefore, not liable to Service tax) or it is a cash management services (liable to Service tax). Contrary views were expressed by Delhi High Court and Kerala High Court. Therefore, now, express provisions are proposed to be introduced explaining the activities carried out by a foreman of chit fund for conducting or organizing a chit in any manner, to be a taxable service. . The said amendment shall be effective from the date of enactment of Finance Bill, 2015. The term “Foreman of Chit Fund” is proposed to be defined. Consequential amendments are made to Negative List of Services to be effective from a notified date after enactment of Finance Bill, 2015.
- 7.3 Further, services provided in relation to chits are granted abatement of 30% subject to specified conditions. The abatement would be removed with effect from 1st April, 2015¹⁴ and Service tax would be levied on 100% of value of taxable services.

GSC Comments: The above levy may still not be free from litigation in view of the comments expressed by Honorable Delhi High Court in the case of *Delhi Chit Fund Association v. Union of India 2013 (30) S.T.R. 347 (Del.)*.

¹³ Section 65B (44) (a) (iii) of the Finance Act, 1994

¹⁴ Notification No. 8/2015-ST dated 1st March, 2015

8. Lottery distributor or selling agent

8.1 While dealing with the issue whether lotteries were goods or not, Constitutional Bench of Hon'ble Supreme Court in case of ***Sunrise Associates vs. Govt. of NCT of Delhi (2006) 5 SCC 603 (SC)*** had held that lottery tickets are not goods and it may, at the highest stage, be considered to be "actionable claim". Under Service tax laws, sale, promotion and marketing of lottery tickets was made liable to Service tax prior to introduction of negative list of services. In case of ***Union of India vs. Martin Lottery Agencies Ltd. 2009 (14) STR 593 (SC)***, Supreme Court held that the introduction of such levy was prospective only. However, the constitutional validity of such levy was not examined.



8.2 The constitutionality aspect was examined by Sikkim High Court in the case of ***Future Gaming Solutions India Pvt. Ltd. vs. Union of India 2015 (37) STR 65 (Sikkim) pronounced on 29th November, 2012***. The High Court observed that powers to levy tax on lottery, being a game of chance, is included in the expression "betting and gambling" in Entry 62 of List II of Seventh Schedule read with Article 246 of the Constitution of India. Therefore, it was held that States have exclusive legislative competence to levy tax on such matters. Accordingly, the provisions levying Service tax on promotion, marketing, organising or in any other manner assisting in organising games of chance, including lottery, were struck down by Sikkim High Court.

8.3 Post introduction of negative list of services, transaction in actionable claims are outside the definition of "service"¹⁵ and betting, gambling and lottery finds place in negative list of services¹⁶. Recently, Sikkim High Court in case of ***Future Gaming***

¹⁵ Section 65B (44) of the Finance Act, 1994

¹⁶ Section 66D (i) of the Finance Act, 1994

Solutions India Pvt. Ltd. vs. Union of India 2014 (36) STR 733 (Sikkim) pronounced on 24th September, 2013, observed once again that lotteries are actionable claims and therefore, it was held that there is no Service tax incidence on distributors of Lottery tickets.

8.4 In order to negate the effect of the above High Court decision and to levy Service tax on activities carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or in any way, facilitating in organizing lottery of every kind, following amendments are made/proposed to be made vide Union Budget 2015-2016:

8.4.1 To further clarify leviability of Service tax on lottery distributor or selling agent, an explanation is proposed to be introduced to the negative list entry of "betting, gambling or lottery"¹⁷.

8.4.2 Existing definition¹⁸ of lottery distributor or selling agent is proposed to be substituted with a new definition in Finance Act, 1994¹⁹.

8.4.3 The above changes shall be effective from the date of enactment of Finance Bill, 2015.

8.4.4 Further, the term "Consideration"²⁰ is proposed to be amended to **include not only the fees, commission or discount** but **also** the amount retained by lottery distributor or selling agent from gross sale amount of lottery ticket i.e. **the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.**

¹⁷ Section 66D (i) of the Finance Act, 1994

¹⁸ Explanation (i) to Rule 6 (7C) of Service tax Rules, 1994

¹⁹ Section 65B (31A) of the Finance Bill, 2015

²⁰ Explanation (a) to Section 67 of the Finance Act, 1994

8.4.5 The distributor or selling agent may opt to pay Service tax on presumptive basis²¹. From a notified date, the presumptive rate of taxes on distributor or selling agent would also be increased. The presumptive Service tax Rate, on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw, is given hereunder:

Particulars	Existing Rate	Rate after Notified Date
If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%	Rs. 7,000/-	Rs. 8,200/-
If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%	Rs. 11,000/-	Rs. 12,800/-

8.4.6 Services provided by selling or marketing agent of lottery tickets to a distributor or selling agent were exempted from Service tax²². However, such services are taxable²³ and are also covered under full RCM with effect from 1st April, 2015. Accordingly, the lottery distributor or selling agent would be required to discharge Service tax liability²⁴.

²¹ Rule 6 (7C) of the Service tax Rules, 1994

²² Sr. No. 29 of Notification No. 25/2012-ST dated 20th June, 2012

²³ Notification No. 6/2015-ST dated 1st March, 2015

²⁴ Notification No. 7/2015-ST dated 1st March, 2015 read with Rule 2 (d) (i) (EEB) of Service tax Rules introduced vide Notification No. 5/2015-ST dated 1st March, 2015

GSC Comments: Even after clarificatory and other amendments, the proposed levy may still be subject to litigations in respect of specific views expressed by Sikkim High Court in the case of *Future Gaming Solutions India Pvt. Ltd. vs. Union of India 2014 (36) STR 733 (Sikkim)*.

9. Service tax on process amounting to manufacture of alcoholic liquor for human consumption

9.1 Any process amounting to manufacture or production of goods is covered under negative list of services²⁵. Now, from a date to be notified after enactment of Finance Bill, 2015, process amounting to manufacture of alcoholic liquors for human consumption would be leviable to Service tax. Accordingly, amendments are proposed to be carried out in the relevant definition²⁶ and negative list of services.



9.2 Further, specified job works are granted exemption from Service tax²⁷. Now, with effect from a notified date, exemption would be withdrawn on job work in relation to alcoholic liquor for human consumption²⁸.

GSC Comments: Excise Duties on manufacture of alcoholic liquor for human consumption is reserved for the States vide Entry 51 of List II of Seventh Schedule read with Article 246 of Constitution of India. Levy of Service tax on the same may provoke litigation.

²⁵ Section 66D (f) of the Finance Act, 1994

²⁶ Section 65B (40) of the Finance Act, 1994

²⁷ Sr. No. 30 (c) of Notification No. 25/2012-ST dated 20th June, 2012

²⁸ Notification No. 6/2015-ST dated 1st March, 2015

10. MFs and AMC's to pay Service tax on services provided by mutual fund agents and distributors

10.1 Currently, services provided by mutual fund agent to a Mutual Fund (MF) or Assets Management Company (AMC) as well as services provided by distributor to a MF or AMC are exempted from Service tax²⁹. Now, with effect from 1st April, 2015, such services would have to bear brunt of Service tax. Further, full RCM is introduced on these services. Accordingly, MFs and AMCs would have to discharge 100% Service tax liability on receipt of these services³⁰.

11. All services provided by Government to business entities covered under Service tax net and also under full RCM

11.1 Post introduction of negative list of services, services provided by Government, except a few, are covered under negative list of services. Various exemptions are also provided to services provided to Government. However, till now, "Government" is not defined under Service tax Laws. Now, "Government"³¹ is proposed to be defined as under:

"Government" means the Departments of the Central Government, a State Government and its Departments and a Union Territory and its Departments, but shall not include any entity, whether created by a Statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;"

²⁹ Notification No. 25/2012-ST dated 20th June, 2012

³⁰ Rule 2 (1) (d) (i) (EEA) of Service tax Rules, 1994 read with Notification No. 7/2015-ST dated 1st March, 2015

³¹ Section 65B (26A) of the Finance Bill, 2015

11.2 At present, following services provided by Government or local authority are taxable³²:

11.2.1 Speed post and parcel post services;

11.2.2 Life insurance and agency services provided to persons other than Government;

11.2.3 Services in relation to aircraft or vessel outside port or airport;

11.2.4 Transportation of goods or passengers and

11.2.5 Defined support services³³ provided to business entities.

11.3 Such support services provided by Government except renting of immovable property to business entities are covered under reverse charge mechanism (RCM).



11.4 Vide Finance Bill, 2015, it is proposed to levy Service tax on all services provided by Government to business entities. Further, all services provided by Government or local authority except renting and other specified taxable services such as speed post, parcel post services etc., to business entities, would get covered under full RCM.

11.5 Consequently, it is proposed to remove the definition of “support services” and amend Service tax Rules, 1994.

11.6 The said change would be effective from a notified date after enactment of Finance Bill, 2015.

GSC Comments: Since the levy is under reverse charge, every Business entity will have to be extra cautious about the payments made to various Departments of

³² Section 66D (a) of the Finance Act, 1994

³³ Section 65B (49) of the Finance Act, 1994

Governments. The onus is on the business entity to ascertain if the payment made to the Government is for a taxable service or otherwise and discharge Service tax liability accordingly. Various charges/fees/premia paid to Authorities would have to be examined carefully.

12. Amendments to Mega Exemption Notification

12.1 Following exemptions are withdrawn with effect from 1st April, 2015³⁴:

12.1.1 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 various structures are exempted. Now, the scope of exemption is narrowed down to exclude services of following structures:

12.1.1.1 A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

12.1.1.2 A structure meant predominantly for use as educational, clinical, or art or cultural establishment;

12.1.1.3 A residential complex predominantly meant for self-use or the use of their employees or specified person.

12.1.2 Construction, erection, commissioning, or installation services of original works pertaining to airport or port are now made taxable.

12.1.3 Artist providing services by a performance in folk or classical art forms of music, dance or theatre except as brand ambassador, are exempted from

³⁴ Notification No. 25/2012-ST dated 20th June, 2012 read with Notification No. 6/2015-ST dated 1st March, 2015

Service tax. Now, such services would become taxable if the consideration charged by such artist is Rs. 1,00,000/- or more.

12.1.4 Service tax is exempted for transport of specified goods by rail or vessel or by a goods transport agency. Till now, foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages are granted such exemption. Now, the said exemption is limited to milk, salt and food grains including flours, pulses and rice. However, exemption to other goods including agricultural produce would be continued.

12.1.5 Services by way of making calls from following telephones are exempted:

12.1.5.1 Departmentally run public telephone;

12.1.5.2 Guaranteed public telephone operating only for local calls and

12.1.5.3 Free telephone at airport and hospital where no bills are being issued.

Now, this exemption is withdrawn.

12.2 Following new exemptions are provided with effect from 1st April, 2015:

12.2.1 Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members, are granted exemption.

12.2.2 Hitherto, transportation of a patient to and from a clinical establishment is exempted from Service tax. Now, the exemption is extended to transportation services of a patient in ambulance.

12.2.3 Currently, various life insurance business services provided under notified schemes are exempt from Service tax. Now, life insurance business services provided under "Varishtha Pension Bima Yojana" is granted exemption.



- 12.2.4 Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables are granted exemption from Service tax.
- 12.2.5 Services by operator of Common Effluent Treatment Plant by way of treatment of effluent are granted exemption from Service tax.
- 12.2.6 Services provided by way of admission to a museum, national park, wild life sanctuary, tiger reserve or zoo are exempted from Service tax levy.

13. Extension of exemption to GTA services for transport of export goods by road to Land Customs Station (LCS)

13.1 Presently, Goods Transport Agency (GTA) services provided to an exporter for following transport of export goods in a goods carriage, are exempted from Service tax³⁵ subject to specified conditions:

- 13.1.1 From any container freight station or inland container depot to port or airport;
- 13.1.2 Directly from place of removal to inland container depot, container freight station, port or airport.

13.2 Now, with effect from 1st April, 2015, this exemption is extended to such GTA service being provided for transport of export goods to a Land Customs Station (LCS)³⁶.

³⁵ Notification No. 31/2012-ST dated 20th June, 2012

³⁶ Notification No. 4/2015-ST dated 1st March, 2015

14. Partial RCM converted to full RCM on supply of manpower and security services

14.1 Presently, supply of manpower services or security services are covered under Partial RCM. Accordingly, 25% of Service tax liability has to be paid by service provider and 75% of Service tax liability to be discharged by service receiver. Now, with effect from 1st April, 2015, full RCM is introduced on these services³⁷.

15. Full RCM introduced on services provided by any person involving aggregator with immediate effect

15.1 Aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name³⁸ of the aggregator³⁹.



15.2 In case any person provides or agrees to provide services, involving an aggregator in any manner, the aggregator is liable to pay Service tax under full RCM⁴⁰. It may be pertinent to note that though aggregator is not a service receiver, he is liable to make Service tax payment under RCM.

³⁷ Notification No. 30/2012-ST dated 20th June, 2012 read with Notification No. 7/2015-ST dated 1st March, 2015

³⁸ Rule 2 (1) (bca) of Service tax Rules, 1994

³⁹ Rule 2 (1) (aa) of Service Tax Rules, 1994.

⁴⁰ Notification No. 7/2015-ST dated 1st March, 2015 read with Rule 2 (1) (d) (i) (AAA) of Service tax Rules, 1994

- 15.3 If the aggregator does not have physical presence in India, representative of aggregator shall be liable to pay such Service tax. In absence of any such representative, the aggregator has to appoint a person in India for payment of Service tax and such person shall be liable to make Service tax payment.
- 15.4 Consequently, notification providing for RCM has been amended to include persons other than service receiver for payment of Service tax.
- 15.5 The above change would come into effect from 1st March, 2015.

16. Recovery without notice in cases of non-payment of disclosed Service tax Liability

- 16.1 Vide Rule 6 (6A) of Service tax Rules, 1994, in cases where the assessee has made self-assessment of Service tax payable in Service tax Returns, however, the same is not paid in full or part, Service tax Department may recover the same with interest in any modes specified under Section 87 of the Finance Act, 1994. Now, it is proposed that such recovery can be made even without issuance of any Show Cause Notice under Section 73 (1) of the Finance Act, 1994⁴¹.
- 16.2 The said amendment shall be effective from the date of enactment of Finance Bill, 2015.

⁴¹ Section 73 (1B) of the Finance Bill, 2015

17. Rationalization of provisions relating to penalties

17.1 Hitherto, Sections 76 and 78 of the Finance Act, 1994 provided for varying penalties for failure to pay Service tax and short/non-payment in certain cases based on the fact whether the transactions on which tax sought to be evaded have been recorded in the specified records or not. To remove anomalies prevailing for such penalties, both these Sections are proposed to be amended as under from the date of enactment of Finance Bill, 2015:

Particulars	Proposed Penalty under Section 76 (<i>Bona fide</i> cases)	Proposed Penalty under Section 78 (<i>Mala fide</i> cases)
Cases covered	<p>Cases <u>other than</u></p> <ul style="list-style-type: none"> • Fraud • Collusion • Wilful mis-statement • Suppression of facts • Contravention of provisions of the Act with intent to evade Service tax payment 	<p>Cases <u>of</u></p> <ul style="list-style-type: none"> • Fraud • Collusion • Wilful mis-statement • Suppression of facts • Contravention of provisions of the Act with intent to evade Service tax payment
Non-levy/Non-payment/Short-	Penalty <u>not exceeding 10%</u> of Service tax (In addition to	Penalty <u>equal to 100% of Service tax</u> (In addition to

levy/Short-payment/Erroneous refund of Service tax and SCN issued ⁴²	payment of Service tax with interest)	payment of Service tax with interest)
Service tax with interest paid within 30 days from the date of service of SCN	<u>No penalty</u>	<u>Reduced penalty of 15% of Service tax provided such reduced penalty is also paid within 30 days from the date of service of SCN</u>
Service tax with interest and reduced penalty as per these Sections is paid within 30 days from the date of receipt of Adjudication Order	<u>25% of the penalty imposed</u>	<u>25% of Service tax</u>
If Commissioner (Appeals), Appellate Tribunal or Court modifies Service tax liability, penalty to be modified accordingly. Benefit of reduced penalties is proposed to be made available provided Service tax, interest and reduced penalty is paid within 30 days from the date of receipt of the Order modifying Service tax liability.		
<i>Note: No discretionary powers with Service tax Department except bona fide cases where the quantum of penalty may be upto 10% of Service tax.</i>		

17.2 Further, transitional provision is proposed to be introduced vide Section 78B of the Finance Bill, 2015 from the date of enactment of Finance Bill, 2015 wherein if there is Non-levy/Non-payment/Short-levy/Short-payment/Erroneous refund of Service tax

⁴² Section 73 (1) and Proviso to Section 73 (1) of the Finance Act, 1994 respectively

and either SCN is not served or if SCN is served, Adjudication Order is not passed before enactment of Finance Bill, 2015, new provisions of Section 76 and 78 shall be applicable.

17.3 In cases where either SCN is not served or Adjudication Order is not passed, however, if the case falls within the four corners of Section 73 (4A) of the Finance Act, 1994, penalty is proposed to not to exceed 50% of Service tax payable.

17.4 Consequently, Section 73 (4A) of the Finance At, 1994 is proposed to be omitted from the date of enactment of Finance Bill, 2015.

18. Removal of provision relating to waiver from penalties

18.1 In cases where the assessee proves that there was a reasonable cause for failure to pay Service tax, penalties under Section 76 and 77 are waived off⁴³. Now, the said Section is proposed to be removed from the date of enactment of Finance Bill, 2015.

GSC Comments: Supreme Court in case of *Pratibha Processors vs. Union of India 1996 (88) ELT 12 (SC)* held that penalty is for contumacious behavior of the assessee and it is penal in nature. Also, principle of natural justice require adjudicating authority to provide adequate opportunity of being heard and that opportunity will be futile if, for reasonable causes, penalties are not waived. Therefore, it appears that even if Section 80 is removed, penalties would not be levied without proper adjudication.

⁴³ Section 80 of the Finance Act, 1994

19. Facility of advance rulings extended to resident firms

19.1 Presently, following persons may apply for advance ruling⁴⁴:

19.1.1 A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident;

19.1.2 A resident setting up a joint venture in India in collaboration with a non-resident;

19.1.3 A wholly owned subsidiary Indian company, of which the holding company is a foreign company, which proposes to undertake any business activity in India;

19.1.4 A joint venture in India;

19.1.5 A public sector company;

19.1.6 A resident public limited company;

19.1.7 A resident private limited company.

19.2 Now, with effect from 1st March, 2015, even a resident firm has the facility to apply for advance rulings⁴⁵. The term "firm" means Partnership Firm and includes Specified Limited Liability Partnership (LLP), Sole Proprietorship and One Person Company.

GSC Comments: With the proposed amendment almost all business entities will be eligible to apply for the Advance Rulings.

⁴⁴ Section 96A(b) of the Finance Act, 1994

⁴⁵ Notification No. 9/2015-ST dated 1st March, 2015

20. Commissioner (Appeals) Rebate Orders to be taken up for revision by Central Government instead of appeal before Appellate Tribunal

20.1 In cases of Commissioner (Appeals) Orders relating to grant of rebate of Service tax on input services and duty paid on inputs, used in exporting services, the appeal lies before Appellate Tribunal. However, now it is proposed to provide remedy of revision by Central Government⁴⁶ instead of right to file an appeal against Appellate Tribunal with effect from the date of enactment of Finance Bill, 2015. Further, all the appeals filed before Appellate Tribunal for the said matter after enforcement of Finance Act, 2012 and pending till the date of enactment of Finance Bill, 2015, shall be transferred for revision by Central Government.

21. Procedural Amendments in Service tax Rules, 1994

21.1 Order No. 1/2015-ST dated 28th February, 2015, effective from 1st March, 2015, has been issued prescribing documentation, time limits and procedure for Service tax Registrations⁴⁷. The key highlights for amendments to Registration Procedure are enumerated hereunder:

21.1.1 Service tax Registration for single premise shall be granted within two days from filing registration application.

21.1.2 All assesseees are mandatorily required to obtain PAN and provide the details to Service tax authorities except Government Departments.

⁴⁶ Section 86 of the Finance Act, 1994

⁴⁷ Rule 4 (9) of Service tax Rules, 1994



- 21.1.3 Downloaded Registration Certificate shall be accepted as proof of registration i.e. no need to obtain signed Registration Certificate.
- 21.1.4 Requisite Documents to be sent within 7 days of filing registration application.
- 21.1.5 Verification of premises provided authorization from Additional/Joint Commissioner.
- 21.1.6 Registration Certification to be revoked in peculiar situations.
- 21.2 Invoices, bill, challans issued under Rule 4A of Service tax Rules, 1994 or consignment notes issued under Rule 4B of Service tax Rules, 1994, may be authenticated by digital signature with effect from 1st March, 2015⁴⁸.
- 21.3 Assesseees may opt to preserve records preserved in electronic form with effect from 1st March, 2015. However, every page of such record shall be authenticated by a digital signature⁴⁹.
- 21.4 The conditions, safeguards and procedure, to be followed by assesseees issuing digitally signed invoices and preserving digitally signed records, would be notified by CBEC in due course.
- 21.5 Consequentially, the phrases "authenticate" and "digital signature" are defined vide Explanation to Rule 5 of Service tax Rules, 1994.

⁴⁸ Rule 4C of Service tax Rules, 1994

⁴⁹ Rule 5 (4) of Service tax Rules, 1994

22. Amendment to CENVAT Credit Rules, 2004

22.1 Following amendments would be effective from 1st March, 2015:

- 22.1.1 Time limit for availment CENVAT Credit on inputs and input services has been increased from 6 months to 1 year⁵⁰ from the date of issuance of Cenvatable document.
- 22.1.2 Now, CENVAT Credit on inputs and capital goods is available to a job worker if goods are directly sent to job worker on the direction of manufacturer or service provider⁵¹.
- 22.1.3 The benefit of availment of CENVAT Credit on inputs as such or after being partially processed by a job worker is extended to include all subsequent job workers in a chain.
- 22.1.4 The benefit of availment of CENVAT Credit on capital goods is available provided capital goods are sent "as such" to the job worker. The time lag allowed for to and fro of capital goods is increased to 2 years as against 180 days for non-reversal of CENVAT Credit.
- 22.1.5 Henceforth, inputs and capital goods may be received at any place by manufacturer or a service provider.
- 22.1.6 In case of export of goods or services, refund of CENVAT Credit is available subject to conditions vide Rule 5 of CENVAT Credit Rules, 2004. Now, the said Rule is amended to include the meaning of Export Goods as under:

*"export goods" means any goods which are to be taken out of India to a place outside India.*⁵²

⁵⁰ Rule 4 (1) (ii) and 6th Proviso to Rule 4 (7) of CENVAT Credit Rules, 2004

⁵¹ Rule 4 (1) (i) and 4 (2) (a) of CENVAT Credit Rules, 2004

22.1.7 Till now, definition of exempted goods⁵³ and final products⁵⁴ included only “excisable goods”. Therefore, CENVAT Credit was not allowed on inputs or input services used in or in relation to manufacture of exempted excisable goods⁵⁵. However, now for the limited purpose of Rule 6 of CENVAT Credit Rules, exempted goods would include even non-excisable goods i.e. to say CENVAT Credit shall not be taken on input or input services used for manufacture of non-excisable goods⁵⁶.

22.1.8 Rule 12AAA of CENVAT Credit Rules, 2004 relating to restrictions to prevent misuse of provisions of Cenvat Credit is made applicable to importers as well.

22.1.9 Till now, CENVAT Credit was recovered provided CENVAT Credit is availed as well as utilised wrongly⁵⁷. However, now SCN may be issued for recovery of CENVAT Credit availed wrongly though not utilized.

22.2 Following amendment to be effective from 1st April, 2015:

22.2.1 In case of Partial RCM, CENVAT Credit is available on input services only when value of input services as well as Service tax is paid. Now, CENVAT Credit, in respect of Service tax payable by service recipient, is available on payment of Service tax and the same is delinked with payment for services made to service provider⁵⁸.

⁵² Clause (1A) to Explanation I of Rule 5 of CENVAT Credit Rules, 2004

⁵³ Rule 2 (d) of CENVAT Credit Rules, 2004

⁵⁴ Rule 2 (h) of CENVAT Credit Rules, 2004

⁵⁵ Rule 6 (1) of CENVAT Credit Rules, 2004

⁵⁶ Explanations 1 and 2 of Rule 6 of CENVAT Credit Rules, 2004

⁵⁷ Rule 14 of CENVAT Credit Rules, 2004

⁵⁸ 1st, 2nd and 3rd Provisos substituted vide 1st and 2nd Provisos to Rule 4 (7) of CENVAT Credit Rules, 2004

23. GST to be introduced with effect from 1st April, 2016

23.1 Finance Minister once again affirmed that the most talked about indirect tax reform; namely; GST would see the day light from 1st April, 2016.



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