

## Service tax



## Key Budget Proposals and Amendments

### Union Budget 2017-2018



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## 1. Retrospective Amendment in Valuation of Works Contract

1.1 Hon'ble Delhi High Court in case of **Suresh Kumar Bansal Vs. Union of India & ORS (2016-TIOL-1077-HC-DEL-ST)** had struck down the levy of service tax on composite contract of construction of residential complex service on the grounds that neither Section 67 of the Finance Act, 1994 which deals with valuation of services nor The Service Tax (Determination of Value) Rules, 2006, provide for any machinery to ascertain the value of services involved in relation to construction of complex, building or civil structure or part thereof.

1.2 In order to provide a mechanism for valuation of works contract services where value of land is involved in the gross amount charged for services provided, the below mentioned amendments have been proposed retrospectively in Rule 2A of Service Tax Valuation Rules, 2006:



Sr. No.	Period	Amendment
1	1 <sup>st</sup> July, 2010 to 30 <sup>th</sup> June, 2012	<ul style="list-style-type: none"> <li>• Rule 2A(1)(i) provides that, value in transfer of property in goods and land or undivided share of land, as the case may be, can be deducted from the gross value of works contract charged.</li> <li>• Rule 2A(2) provides that, where value includes the value of goods as well as land or undivided share of land but cannot be determined as above, service tax shall be payable on 25% of the gross amount charged inclusive of value of goods supplied or provided or used for providing taxable service by service provider.</li> </ul>

		<ul style="list-style-type: none"> <li>• Provided no CENVAT has been availed on inputs, input services and Capital Goods</li> <li>• No benefit of exemption Notification No. 12/2003-ST has been claimed (Sale of goods by service provider)</li> </ul>
2	1 <sup>st</sup> July, 2012 onwards	<ul style="list-style-type: none"> <li>• Rule 2A(i) is amended to provide that value in transfer of property in goods or in goods and land or undivided share of land, as the case may be, shall be deducted from the gross value of works contract charged.</li> </ul>
3	1 <sup>st</sup> July, 2012 to 28 <sup>th</sup> February, 2013	<ul style="list-style-type: none"> <li>• Rule 2A(ii) of the Valuation Rules shall be referred where value of works contract cannot be determined as per Rule 2A(i) (Actual deduction method).</li> </ul> <p>A proviso has been inserted to Rule 2A(ii) which is</p> <ul style="list-style-type: none"> <li>• Where amount charged for works contract includes value of goods as well as land or undivided share of land, service tax shall be payable on 25% of the gross amount charged inclusive of value of goods supplied or provided or used for providing taxable service by service provider.</li> </ul>
4.	1 <sup>st</sup> March, 2013 to 7 <sup>th</sup> May, 2013	<p><b>The above Proviso shall be:</b></p> <ul style="list-style-type: none"> <li>• Where amount charged for works contract includes value of goods as well as land or undivided share of land, service tax shall be payable on 30% of the total amount charged for</li> </ul>

		<p>the works contract</p> <ul style="list-style-type: none"> <li>In case of works contract for construction of residential units having carpet area up to 2000 square feet or where the amount charged per residential unit from service recipient is less than rupees one crore, and the amount charged includes value of goods as well as land or undivided share of land, service tax shall be payable on 25% of the total amount charged.</li> </ul>
5.	8 <sup>th</sup> May, 2013 to 31 <sup>st</sup> March, 2016	<ul style="list-style-type: none"> <li>Where amount charged for works contract includes value of goods as well as land or undivided share of land, service tax shall be payable on 30% of the total amount charged for the works contract</li> <li>In case of works contract for construction of residential units having carpet area up to 2,000 square feet and where the amount charged per residential unit from service recipient is less than rupees one crore, and the amount charged includes value of goods as well as land or undivided share of land, service tax shall be payable on 25% of the total amount charged.</li> </ul>
6.	1 <sup>st</sup> April, 2016 onwards	<ul style="list-style-type: none"> <li>Where amount charged for works contract includes value of goods as well as land or undivided share of land, service tax shall be payable on 30% of the total amount charged for the works contract</li> </ul>

- 1.3 It has also been proposed that the above amendments shall prevail over any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done at any time since July, 2010 in this regard.
- 1.4 The above amendments shall be effective from the date when the President of India gives its assent to the Finance Bill, 2017 for the period starting from 1<sup>st</sup> July, 2010.

**GSC Comments:**

- 1) Hon'ble Delhi High Court in the case of **Suresh Kumar Bansal Vs. Union of India & ORS (2016-TIOL-1077-HC-DEL-ST)**, struck down to the levy of service tax on construction Services for want of valuation mechanism.
- 2) Rule 2A is proposed to be amended retrospectively to provide valuation mechanism for the works contract services where value of land is also included in the value charged for such services.
- 3) In view of the above amendments, following issues have arose:
  - a) The observations made by Hon'ble Delhi High Court were with respect to Construction Services. Whereas, the amendments proposed are for valuing the Services of Works Contract, where value of land is included in the gross amount charged. Therefore, whether it can be construed that, Services of construction of a complex, building or civil structure or part thereof and Works contract Services are at par, given the fact that both the services are separately covered under Declared Services<sup>1</sup>?
  - b) Accordingly, whether services of Construction of complex, building or civil



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<sup>1</sup> Section 66E of the Finance Act, 1994

structure or part thereof, can be valued as per Rule 2A of Valuation Rules, 2006, which specifically deals with valuation of Works Contract Service?

- c) Can the services of construction which are already provided for the prior period be revalued according to the proposed amendment?
- d) If so, can the refund of service tax be claimed, if such tax is paid in excess due to change in valuation mechanism?
- e) If so, who is eligible to claim the refund, whether provider of construction services or recipient of services?
- f) What shall be the time limit for claiming refund?

## **2. Process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption to be removed from Negative List and added to Mega Exemption Notification**

- 2.1 Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption is presently under the Negative List of services<sup>2</sup> and therefore not taxable. However, it is proposed to remove these services from Negative List.
- 2.2 Accordingly, the above services are brought under the charge of Service Tax but have been exempted by way of insertion of an entry in Mega Exemption<sup>3</sup>.
- 2.3 The above amendment shall be applicable on the date when the President of India gives its assent to the Finance Bill, 2017.

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<sup>2</sup> Section 66D of the Finance Act, 1994

<sup>3</sup> Notification 25/2012-ST as amended by Notification No. 07/2017-ST dated 1<sup>st</sup> February, 2017

### **3. Amendment in Provisions pertaining to Advance Rulings**

#### 3.1 Amendment in definitions:

3.1.1 Clause (d) of section 96A is proposed to be amended so as to substitute the definition of “Authority” to mean the Authority for Advance Ruling as constituted under section 28E of the Customs Act, 1962.

3.1.2 Whereas, section 28(E) of the Customs Act, 1962, is also proposed to be amended so as to substitute the definition of “Authority” to mean the Authority for Advance Ruling as constituted under section 245-O of the Income-tax Act, 1961



3.2 Application fee for seeking advance ruling has been proposed to be increased from Rs. 2,500/- to Rs. 10,000/-.

3.3 Time Limit for the Authority to pronounce its ruling has been proposed to be extended from ninety days to six months.

3.4 A new section has been proposed to be inserted so as to provide for transferring the pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) to the Authority constituted under section 245-O of the Income-tax Act from the stage at which such proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

3.5 The above amendment shall be applicable on the date when the President of India gives its assent to the Finance Bill, 2017.



#### 4. Special Provisions for exemptions in certain cases

##### 4.1 One time upfront payment charges

4.1.1 Services of granting long term (thirty years, or more) lease of industrial plots provided by State Government Industrial Development Corporations/ Undertakings to industrial units against one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) are exempt by way of Notification<sup>4</sup> with effect from 22<sup>nd</sup> September, 2016.

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4.1.2 Now, it has been proposed to exempt the above services retrospectively with effect from 1<sup>st</sup> June, 2007.

4.1.3 Further, application for refund can be made within a period of 6 months from the enactment of Finance Bill, 2017 for the cases where service tax has been collected, but which would not have been so collected upon above services as if the exemption was in effect since 1<sup>st</sup> June, 2007.

##### 4.2 Life Insurance services by Army, Naval and Air Force Group Insurance Funds

4.2.1 Life insurance services are liable to service tax. However, certain Services of life insurance under specified schemes are exempted from services vide Mega Exemption Notification.

4.2.2 Now, retrospective exemption has been proposed for the services provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air



<sup>4</sup> Notification No. 41/2016-ST dated 22<sup>nd</sup> September, 2016

Force, respectively, under the Group Insurance Schemes of the Central Government, during the period commencing from the 10<sup>th</sup> day September, 2004 to 1<sup>st</sup> February, 2016 (both days inclusive).

4.2.3 Further, the above services have been exempted by way of an exemption Notification<sup>5</sup>.

4.2.4 Application for refund can be made within a period of 6 months from the enactment of Finance Bill, 2017 for the cases where service tax has been collected, but which would not have been so collected upon above services as if the exemption was in effect since 1<sup>st</sup> June, 2007.

## 5. Services Provided by IIM

5.1 Currently, “Services provided by Indian Institute of Management as per the guidelines of Central Government to their student by way of two year full time residential Post Graduate Programme (PGP) for Post Graduate Diploma Programme (PGDM) in Management for which admissions are provided on the basis Common Admission Test (CAT)” are exempt<sup>6</sup> from the levy of Service tax. Vide entry no. 9B of the Mega Exemption notification no. 25/2012-ST.

5.2 The word “residential” has been removed<sup>7</sup> from the above entry with effect from 2<sup>nd</sup> February, 2017

5.3 Accordingly, even non-residential two years full time Post Graduation Programme for Post Graduate Diploma in Management, to which admissions are made through Common Admission Test (CAT) will enjoy exemption from Service tax.

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<sup>5</sup> Notification 25/2012-ST as amended by Notification No. 07/2017-ST dated 1<sup>st</sup> February, 2017

<sup>6</sup> Entry no. 9B of the Mega Exemption notification no. 25/2012-ST

<sup>7</sup>Notification no. 07/2017-ST dated 1<sup>st</sup> February, 2017

## 6. Exemption to passenger transport Services under Regional Connectivity Scheme

6.1 Services by way of providing connectivity and passenger transportation on the airports under Regional connectivity scheme were taxable.

6.2 Exemption<sup>8</sup> has been provided to such services for a period of one year from the date of commencement of operations at Airport built under Regional Connectivity Scheme where consideration is received in the form VGF by airline operator.



## 7. Turnover in the form of interest and discounts to be included in the value of turnover for banks, financial institutions and NBFCs

7.1 Presently, every service provider providing exempted as well as non-exempted services have to reverse the CENVAT Credit on proportionate basis. Accordingly, banking companies and financial institutions including NBFCs, are required to reverse proportionate CENVAT Credit following either of the below mentioned options<sup>9</sup>:

- a) Pay an amount equal to 6% of exempted goods / 7% of exempted services
- b) Determine reversal of Credit on input and input services as per formula prescribed in Rule 6 (3A) of Cenvat Credit Rules



<sup>8</sup>Notification no. 25/2012-ST as amended by Notification no. 07/2017-ST dated 1<sup>st</sup> February, 2017

<sup>9</sup> Rule 6(3) of Cenvat Credit Rules, 2004

c) Pay every month an amount equal to 50% of the total Credit availed

7.2 Hitherto, interest or discount earned, were not included in the value<sup>10</sup> i.e. in the turnover of exempted and taxable services for determining the ratio for proportionate reversal of CENVAT Credit.

7.3 Now, with effect from 2<sup>nd</sup> February, 2017, such interest or discount would form part of the turnover of exempted service as well as total turnover for the purpose of reversal of CENVAT Credit of banking companies and financial institutions including NBFCs<sup>11</sup>.

## **8. Transfer of CENVAT Credit**

8.1 Presently, in case of shift of factory of manufacturer or premise of output service provider to another place or transfer of business/factory on account of change in ownership or transfer of business/factory by way of sale, merger, amalgamation, lease to a joint venture, the manufacturer or output service provider is allowed to transfer the balance unutilized CENVAT credit subject to fulfillment of specific conditions<sup>12</sup>.

8.2 The transfer of credit was allowed only if, the inputs and capital goods which are lying in stock or are in processing are also transferred to the satisfaction of officer. However, no time limit was prescribed for the proper officer to approve such transfer.

8.3 Now, the proper officer will have to approve such transfer of CENVAT credit within a period of 3 months from the date of application<sup>13</sup>.

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<sup>10</sup> Value of service by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, is not includible

<sup>11</sup> Amendment to Explanation 1 (e) of Rule 6 (3) & (3A) of CENVAT Credit Rules, 2004 vide Notification No. 4/2017- CE(NT) dated 2<sup>nd</sup> February, 2017

<sup>12</sup> Rule 10 of Cenvat Credit Rules, 2004

<sup>13</sup> Notification No 4/2017 – CE(NT) Dated 2<sup>nd</sup> February, 2017

- 8.4 The time limit of 3 months can be extended by additional period of 6 months by the Principal Commissioner or Commissioner of Central Excise on sufficient cause being shown and reasons to be recorded in writing.

## **9. Research and Development Cess Act, 1986 to be repealed**

- 9.1 Service Tax as well as Research and Development Cess (R&D Cess) is payable on import of technology. Exemption 14 on payment of service tax has been granted to the extent of R&D Cess payable on the said import of technology under Research and Development Cess Act, 1986.



- 9.2 Since, Research and Development Cess Act, 1986 is proposed to be repealed, no R&D Cess would be payable and therefore, benefit of the above exemption shall not be available and service tax (including SBC and KKC) would be payable at the rates as applicable.

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<sup>14</sup> Notification no. 14/2012-ST dated 17<sup>th</sup> March 2012

**Abbreviations:**

<b>Name</b>	<b>Particulars</b>
<b>SBC</b>	Swachh Bharat Cess
<b>KKC</b>	Krishi Kalyan Cess

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