

SERVICE TAX BUDGET

2013-14

Detailed analysis for professionals of Service Tax

CA RAJAT MOHAN

18A, IInd Floor, North Avenue Road, West Punjabi Bagh, New Delhi-110026

Office Phone: 011-47322696/97

SERVICE TAX ANALYSIS

1. HEADING-Scope of Negative List Widened

SECTION- 65B (11) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Definition of 'approved vocational education course' provided in section 65B (11) is being amended: firstly, the words, 'or State Council of Vocational Training' (SCVT) is being inserted in (i), and secondly, entry at item serial number (iii) is being omitted, for NSDC is not an affiliating body. After the proposed amendment takes effect, courses in 'designated trades' offered by Industrial Training Institute or Industrial Training Center affiliated to State Council of Vocational Training will also be covered by the negative list;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Definition of “approved vocational education courses” is being changed to include a course run by an industrial training institute or an industrial training centre affiliated to State Council for Vocational Training. Further, courses run by an institute affiliated to the National Skill Development Corporation are being excluded from the scope of the definition because National Skill Development Corporation is not an affiliating body.

Due to this, Industrial Training Institute or industrial Training Center affiliated to State Council of Vocational Training will not be liable to pay service tax on courses offered in ‘designated trades’.

2.HEADING- Excise extended to processes under MTPA Act, 1955

SECTION- 65B(40) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Definition of "process amounting to manufacture or production of goods", in section 65B (40) being amended to include processes on which duties of excise are leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955(16 of 1955);

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Excise duty is also levied on Processes under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 are also being included in the said section.

3.Heading-Any reference to sec 66B should be read as 66

RELEVANT SECTION- 66BA OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Explanation contained in Removal of Difficulty Order 2/2012 is being introduced as a separate section, namely 66BA. By the authority of this section, references to section 66 (charging section under the positive list approach) in Chapter V of the Finance Act, 1994 or any other act, will be construed as reference to section 66B (charging section under the negative list approach), with effect from the 1st day of July, 2012. Reference to section 66 appearing in the Finance (No.2) Act, 2004 and the Finance Act, 2007, in the context of education cesses will be read as 66B, in accordance with this new section;

APPLICABILITY- This sub-clause shall come into effect retrospectively with effect from the 1st day of July, 2012.

IMPACT- A new charging section was introduced in last Finance Bill, 2012 i.e. 66B in place of 66. Any reference to Section 66 of earlier in legislation would be construed as reference to Section 66B of Finance Act, 1994.

4.Heading- Scope of Negative List Widened.

SECTION-66D(d)(i) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

The word, 'seed' is being omitted from the expression 'seed testing' found in section 66D (d)(i). As a result, testing activities directly related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes will be covered by the negative list;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Any testing activity related to production of any agricultural produce like soil testing, animal feed testing, testing of samples from plants or animals, for pests and disease causing microbes will not be liable to service tax.

5.HEADING-Modification in section 73

SECTION-73(2A) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

In section 73, a new sub-section (2A), similar to sub-section (9) of section 11A of Central Excise Act, 1944, is being inserted to harmonize the Central Excise and Service Tax law. As a result, if a show cause notice issued under proviso to sub-section (1) of section 73, is not found sustainable by an appellate authority or tribunal or court, the same will be deemed to be a notice issued for a period of eighteen months;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- This is a taxpayer friendly amendment if, CEO is unable to prove charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act he shall determine the demand in shorter period of eighteen months.

6.HEADING- Changes in provisions of Penalty

SECTION-77(1) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 77, sub-section (1), clause (a), is being amended, in such manner that, maximum penalty imposable for failure to obtain registration will be ten thousand rupees only;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

Impact: Maximum Penalty for non-registration will be Rs. 10,000.

7.Heading-KMPs are also covered under penalty provisions.

SECTION - 78 OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 78A is being introduced, to make provision for imposition of penalty on director, manager, secretary or other officer of the company, who is in any manner knowingly concerned with specified contraventions;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Penalty on director, manager, secretary or other officer of the company will be imposed for specified offences e.g. evasion of service tax, in cases of willful actions.

8.Heading- appellate tribunal can admit even after completion of relevant period.

SECTION – 86(5) OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

In section 86, sub-section (5), it is proposed to insert the expression "sub-section (1) or" appropriately. Therefore, in case of assessee appeal also, appellate tribunal can admit an appeal or permit the filing of memorandum of cross objections after the expiry of the relevant period;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- An appellate tribunal can admit an appeal or permit the filing of memorandum of cross objections even after the expiry of the relevant period.

9.Heading - Minimum punishment shall not be less than six months.

SECTION –89 OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 89 is being amended: (i) in the case of an offence specified in clauses (a), (b) and (c) of sub-section (1) where the amount exceeds fifty lakh rupees, punishment shall be for a term which may extend to three years, but shall not, in any case, be less than six months; (ii) in the case of failure to pay service tax collected, to the credit of the Central Government within six months, an offence specified in section 89(1)(d), if such non-payment exceeds fifty lakh rupees, punishment shall be imprisonment for a term which may extend upto seven years but not less than six months; (iii) in the case of any other offence, the punishment shall be imprisonment for a term which may extend to one year;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- In case of offence mentioned under sec 89 (1), more rigorous punishment has been made. Minimum punishment shall not be less than six months and can be extended to one year, three year or seven year as the case may be.

10. HEADING-Offences are revised

SECTION –90 OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 90 is being introduced to specify and differentiate cognizable offences from non-cognizable and bailable offences

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Offences under sec 89 has been revised to make certain offences cognizable and others non-cognizable and bailable. (For more details refer to sec 89).

11. HEADING-Power to arrest has extended

SECTION –91 OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 91 is being introduced to provide for power to arrest; Commissioner of Central Excise is empowered to authorize any officer of Central Excise not below the rank of

Superintendent of Central Excise, to arrest a person for specified offences particularly non-payment of collected service tax;

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Now, any officer not below the rank of Superintendent of Central Excise can arrest a person for offences stated in 89(1).

12.HEADING- Central Government can remove any anomaly in this Finance Bill(Finance Act).

SECTION –95 OF FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Section 95 is being amended to empower the Central Government for removal of difficulty in respect of amendments carried out through the Finance Act, 2013.

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT- Any difficulty arises while implementation of Finance Act, 2013 may be removed by Central Government.

13.HEADING- Indian railways can have a sigh of relief for notices issued till Budget Day

SECTION –SEC 99 FINANCE ACT, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Retrospective exemption is being extended to the Indian Railways on the service tax leviable on various taxable services provided by them during the period prior to the 1st day of July 2012, to the extent show cause notices have been issued upto the 28th day of February 2013. Section 99 is being added for this purpose, in Chapter V of the Finance Act, 1994.

APPLICABILITY- From the date of enactment of Finance Bill, 2013.

IMPACT-Service tax shall not be levied or collected on the Indian Railways Services provided before 01.07.2012 to the extent notices have been issued up to the 28.02.2013.

14.HEADING-Construction Activity

SECTION – 66D of Finance Act, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

At present taxable portion for service tax purpose is prescribed as 25% uniformly for constructions where value of land is included in the amount charged from the service recipient. This is being rationalized. Accordingly, where the carpet area of residential unit is upto 2000 square feet. or the amount charged is less than One Crore Rupees, in the case of 'construction of complex, building or civil structure, or a part thereof, intended for sale to a buyer, wholly or partly except where the entire consideration is received after issuance of completion certificate by the competent authority', taxable portion for service tax purpose will remain as 25%; in all other cases taxable portion for service tax purpose will be 30%. This change will come into effect from the 1st day of March, 2013.

APPLICABILITY-Changes Applicable w.e.f. 1st March, 2013

IMPACT- Service tax rate will be 3.708% (30% of 12.36%) to developers of complex, building or civil structure except where Residential properties having a carpet area is upto 2000 sq ft and where amount charged is less than Rs. 1 crore. (*Notification No. 02/2013-ST dated 1st March, 2013*). In these 2 case service tax rate would be 3.09% (25% of 12.36%):

1. Residential properties having a carpet area is upto 2000 sq ft: or
2. Residential properties where amount charged is less than Rs. 1 crore.

15.HEADING-Exemption for Charitable organizations withdrawn

SECTION – No. 25/2012-ST dt. 20.6.2012

MEMORANDUM EXPLAINING THE FINANCE BILL –

Rationalization of exemption limit prescribed for charitable organizations, providing service towards any other object of general public utility. So far, the limit was 25 Lakh Rupees per annum. Now, they will be covered by the threshold exemption.

APPLICABILITY- Changes Applicable w.e.f. 01.04.2013

IMPACT- Exemption of Rs. 25 lacs given to activities relating to advancement of any other object of general public utility has been withdrawn for Charitable institutes. Now they would be covered by existing provisions of SSI which Rs. 10 Lacs only.

16.HEADING-Service tax levied on all restaurants with air-conditioning or central air heating.

SECTION –Notification under Finance Act, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Exemption provided to restaurants other than those having (i) air-conditioning and (ii) license to serve liquor, is being rationalized; condition regarding 'license to serve liquor' is being omitted. Therefore, with effect from 1st April, 2013, service tax will be leviable on taxable service provided in restaurants with air-conditioning or central air heating in any part of the establishment at any time during the year

APPLICABILITY- Changes Applicable w.e.f. 01.04.2013

IMPACT- Now restaurants with air-conditioning or central air heating irrespective of whether they have a license to serve alcohol or not will come under service tax regime. Thereby food of small chain/outlets like Dominos, Nirulas, KFC, Subway will go up.

17.HEADING- Exemptions withdrawn for few services.

SECTION – Finance Act, 1994.

MEMORANDUM EXPLAINING THE FINANCE BILL –

The following exemptions are being withdrawn:

- Services provided by an educational institution by way of renting of immovable property.
- Temporary transfer or permitting the use or enjoyment of a copyright relating to cinematographic films was fully exempt so far; now, this exemption will be restricted to exhibition of cinematograph films in a cinema hall or a cinema theatre.
- Services by way of vehicle parking to general public.
- Services provided to Government, a local authority or a governmental authority, by way of repair or maintenance of aircraft.

APPLICABILITY- Changes Applicable w.e.f. 01.04.2013

IMPACT- Service tax is now levied on above services.

18.Heading- ‘Voluntary Compliance Encouragement Scheme’

Section – Finance Act, 1994

Memorandum explaining the finance bill –

To encourage voluntary compliance and broaden the tax base, it is proposed to provide one time amnesty by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the stop filers, non-filers or non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012) who pay the "tax dues". Details of the scheme are available in Chapter VI of the Finance Bill, 2013. The scheme will be operational from the date on which the Finance Bill, 2013 receives the assent of the President

APPLICABILITY- From the date of Enactment of Finance Bill, 2013:-

IMPACT-Time has been given to non filers of service tax returns during the period from October 2007 to December 2012, to file Service tax return and pay only the tax due there on in 1 or 2 instalments before prescribed dates, in such case no penalty, interest or prosecution would be launched against tax payers.

Mr. Finance Minister said there are 17 lacs registered assessee for service tax however only seven Lacs file returns regularly. He has launched this scheme to force these 10 lacs to file

the returns. I would like to bring to his notice that more than 50% of the assessee would have surrendered their registration number by way of any communication to department whereas this department is not deactivating their registration number. Our office has long list of clients who have already surrendered but we keep receiving notices of filing of returns. Finance Minister must ask his officers to provide him true and fair facts before taking any decision.

19. HEADING- Scope of ARA enhanced

SECTION –96A (b) (iii) of Finance Act, 1994

MEMORANDUM EXPLAINING THE FINANCE BILL –

Scope of advance ruling is being extended to cover resident public limited companies; a notification is being issued for this purpose, under section 96A (b) (iii) of the Finance Act, 1994.

APPLICABILITY- Changes Applicable w.e.f. 01.03.2013

IMPACT- Now Resident Public Limited companies have been covered in Advance Ruling Authority. (*Notification No. 04/2013-ST dated 1st March, 2013*)