

UNION BUDGET - 2014 AMENDMENTS IN SERVICE TAX

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OVERVIEW OF THE SESSION

- Budget Numbers
- Amendments by Finance Act, 2014
- Amendments by Notifications
- Clarifications provided through Circulars

QUICK NUMBERS

Major Head	Actual	Budget	Change
	2012-13	2013-14	in %
(In Crores of Rupees)			
Taxes on Income & Expenditure			
Corporation Tax	356,326	451,005	27%
Tax on Income Other than Corporation Tax	196,512	278,275	42%
Taxes on Commodities & Services			
Customs	165,346	201,819	22%
Union Excise Duties	175,844	206,356	17%
Service Tax	132,600	215,973	63%

SERVICE TAX BUDGET AMENDMENTS

- Budget Speech – Para 238 to 246
- The Finance (No.2) Act, 2014
 - Section 106
 - Notes on Clauses
- Notifications
 - No. 6/2014 ST – 15/2014 ST all dt.11.7.14
 - No.18/2014 ST dt.25.8.14
 - No. 21/2014 C.E. (N.T.) dt.11.7.14
- Circulars
 - D.O.F No.334/15/2014 – TRU dt.10.7.14
 - D.O.F. No.334/15/2014 – TRU dt.25.8.14

FINANCE (NO.2) ACT, 2014 – ADVERTISEMENT - -VE LIST

- Before – S. 66D(g)
- Selling of Space or Time Slots for advertisement other than advertisement broadcast by:
 - Radio
 - Television
- After – S. 66D(g)
- Selling of Space for advertisement in print media
- Print Media defined – S. 65B(39a)
- Effect from 1.10.14 – N/n 18/14 ST

MEANING OF PRINT MEDIA

- S. 65B(39a) - means,—
- (i) "book" as per S. 1(1) of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;
- (ii) "newspaper" as S. 1(1) of the Press and Registration of Books Act, 1867
- Book" includes every volume, part of division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed 5[***];
- ["newspaper" means any printed periodical work containing public news or comments on public news;]

EFFECT OF AMENDMENT

- Online & Mobile Advertisement
- Advertisement in internet website, OOH Media, Theaters
- Advertisements in bill boards, conveyances, buildings
- Advertisements in ATM Machines, tickets, commercial publications
- Arial Advertising

CONSTITUTIONAL ISSUES

- E. No. 92 of List I to VII Sch – Taxes on the sale or purchase of newspaper and on advertisements published therein
- E. No. 55 of List II to VII Sch – Taxes on advertisements other than
 - advertisement published in the newspapers and
 - advertisement broadcast by radio and television.
- Whether Centre has the power to levy service tax ?

FINANCE (NO.2) ACT, 2014 RADIO TAXI -VE LIST

- Before – S. 66D(o)(vi)
- Services of transportation by:
 - (i) to (v)
 - (vi) metered cabs, radio taxis or auto rickshaws
- After – S. 66D(o)(vi)
- Services of transportation by:
 - (i) to (v)
 - (vi) Metered cabs and auto rickshaws
 - “Radio Taxis” – Deleted
- Effect from 1.10.14 – N/n 18/14 ST

DEFINITIONS

- '(za) “radio taxi” means a taxi including a radio cab,
- by whatever name called,
- which is in two-way radio communication
- with a central control office and is enabled for tracking
- using Global Positioning System (GPS) or General Packet Radio Service (GPRS) –
- Definition given in MEGA EXEMPTION
- metered cab means
- any contract carriage
- on which an automatic device,
- of the type and make approved by the State Transport Authority, is fitted
- which indicates reading of the fare
- chargeable at any moment
-[but does not include radio taxi];
- S.65B(32)

FINANCE (NO.2) ACT, 2014 RATE OF EXCHANGE

- Before – S.67A
- Rate of exchange means rate of exchange defined u/s 14 of CA, 62
- After – S.67A
- Rate of exchange means rate of exchange determined in accordance with such rules as may be prescribed
- Effect from 1.10.14 – N/n 18/14 ST
- Rule 11 of STR, 94 – N/n 19/14 ST

RATE OF EXCHANGE - ANALYSIS

- STR, 94 Rule 11- Determination of rate of exchange.–
- The rate of exchange for determination of value of taxable service
- shall be the applicable rate of exchange
- as per the generally accepted accounting principles
- on the date when point of taxation arises
- in terms of the point of taxation rules, 2011.
- N/n 19/14 ST - W.e.f. 1.10.14

TIME LIMIT FOR ASSESSMENT

- Sub Section (4B) inserted to S.73
- Adjudicating Authority to determine service tax due
 - Within 6 m from date of notice for normal period of limitation case
 - Within 12m from date of notice for extended period of limitation case
- Whether compulsory?
 - “Where it is possible to do so”

COMPULSORY IMPOSITION OF PENALTY

- Before Amendment - Sec. 80
- On Showing reasonable cause
- No penalty was imposable even when SCN issued for extended period when
- True and complete details of transaction available in records
- Penalty imposable – 50% of demand
- After Amendment – Sec. 80
- Even on showing reasonable cause
- Adjudicating Officer has no discretion not to impose 50% penalty under proviso to S.78(1)
- 50% Penalty compulsory

POWER TO SEARCH PREMISES

- Before - Sec. 82
- JC or any Superintendent authorized by JC had power to search and seize documents
- After – Sec. 82
- JC or ADC or
- Such other CEO
 - As may be notified by board
- Power to search/ seize expanded

CENTRAL EXCISE PROVISIONS APPLICABLE TO SERVICE TAX

- Section 83 of FA, 44 makes certain provisions of CEA, 44 applicable to ST
- Section 5A(2A) of CEA, 44 now made applicable to ST
- CG may, insert an explanation
- in any notification or order,
- at any time within one year of issue of the notification/ order and
- every such explanation shall have effect as if it had always been the part of the first notification/ order
 - Retrospective Effect
 - Applicable only to exemption notifications

CENTRAL EXCISE PROVISIONS APPLICABLE TO SERVICE TAX

- Section 15A and 15B of CEA, 44 made applicable to ST
- S. 15A Obligation on certain persons to furnish information return to CEO
 - An assessee; or
 - A local authority or other public body or association; or
 - Any authority of SG responsible for the collection of VAT or sales tax; or
 - Income tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or
 - A banking company
 - State Electricity Board; or an electricity distribution or transmission licensee, or any other entity entrusted with such functions by the CG/ SG; or

CENTRAL EXCISE PROVISIONS APPLICABLE TO SERVICE TAX

- S. 15A Obligation on certain persons to furnish information return to CEO
 - Registrar or Sub-Registrar under the Registration Act, 1908 (16 of 1908); or
 - Registrar under the Companies Act, 2013 (18 of 2013); or
 - Registering authority empowered to register motor vehicles or
 - Collector of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or
 - Recognised stock exchange or
 - Depository or
 - Officer of RBI

CENTRAL EXCISE PROVISIONS APPLICABLE TO SERVICE TAX

- Record of registration or statement of accounts or
- any periodic return or document containing details of payment of tax and
- details or transaction of goods or services or
- transactions related to a bank account or
- consumption of electricity or
- transaction of purchase, sale or exchange of
 - goods or property or right or interest in a property,
- shall furnish information return in respect of such periods, within such time, form (including electronic form) and manner,
- to such authority or agency as may be prescribed.

PRE-DEPOSIT

- Commissioner (Appeals), shall not entertain any appeal unless the appellant:
 - Has deposited 7.5% of duty, where only duty or duty + penalty are in dispute
 - Has deposited 7.5% of penalty, where only penalty is in dispute
- Tribunal shall not entertain any appeal
 - In case of first appeal
 - Has deposited 7.5% of duty, where only duty or duty + penalty are in dispute
 - Has deposited 7.5% of penalty, where only penalty is in dispute
 - In case of second appeal
 - Has deposited 10% of duty, where only duty or duty + penalty are in dispute
 - Has deposited 10% of penalty, where only penalty is in dispute

PRE-DEPOSIT

- Pre-Deposit shall not exceed 10 Crores
- Whether balance 2.5% or entire 10% has to be paid in case of second appeal?
- What about stay applications and appeals pending prior to commencement of Finance (No.2) Act, 2014?
- Circular No. 802/35/2004-CX dt.8.12.04
 - Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers.
 - All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers.

STAY APPLICATION

- Before – S. 86 (6A)
- Every Application made before Appellate Tribunal –
 - (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose
 - (b).....
- After – S.86(6A)
- Every Application made before Appellate Tribunal –
 - (a) in an appeal [* * *] for rectification of mistake or for any other purpose
 - (b).....

RECOVERY BY CENTRAL GOVT.

- Proviso inserted to Section 87(c) as follows:
- Where any amount is recoverable from Predecessor
- And Predecessor transfers/ disposes of his business or trade or
- effects any change in ownership
- Then all goods in custody/ possession of Successor
- may be attached and sold by
- after obtaining the written approval of CCE,
- for recovering such amount due from such predecessor at the time of such transfer or otherwise disposal or change.

AMENDMENTS MADE BY WAY OF NOTIFICATIONS

- Cenvat Credit – Notification No. 21/2014 – C.E. (N.T.) dt.11.7.14
- Mega Exemption – Notification No. 6/2014 ST dt.11.7.14
- Abatement – Notification No. 8/2014 ST dt.11.7.14
- Service Tax Rules – Notification No. 9/2014 ST dt.11.7.14
- JCM/ RCM – Notification No. 10/2014 ST dt.11.7.14
- Service Tax Valuation Rules – Notification No. 11/ 2014 ST dt.11.7.14
- Interest for delayed payment of ST – Notification No. 12/2014 ST dt.11.7.14
- Point of Taxation Rules – Notification No.13/2014 ST dt.11.7.14
- Place of Provision of Service – Notification No. 14/2014 ST dt.11.7.14

CENVAT CREDIT – AVAILMENT

- Before Insertion of Third proviso to Rule 4(1) of CCR, 04
- No third proviso before
- No time limit to take CENVAT Credit on inputs
- After Insertion of Third Proviso to Rule 4(1) of CCR,04
- Proviso – Manufacturer or service provider
- Shall not take CENVAT Credit
- After 6 months of the date of issue of document referred to under Rule (1) of CCR, 04
- Effect from 1.9.14 – N/n. 21/14 CE(NT) dt.11.7.14

CENVAT CREDIT – AVAILMENT

- Before Insertion of Sixth proviso to Rule 4(7) of CCR, 04
- No sixth proviso before
- No time limit to take CENVAT Credit on input service
- After Insertion of Sixth Proviso to Rule 4(1) of CCR,04
- Proviso – Manufacturer or service provider
- Shall not take CENVAT Credit
- After 6 months of the date of issue of document referred to under Rule (1) of CCR, 04
- Effect from 1.9.14 – N/n. 21/14 CE(NT) dt.11.7.14

CENVAT CREDIT – REVERSAL

- Old 1st Proviso to Rule 4(7)
- Where ST was payable on Reverse Charge, Credit thereof was available on or after the date of payment
- Payment = Value of I/P service + ST thereon
- Applicable for RCM/ JCM
- New 1st Proviso to Rule 4(7)
- Where whole of ST is liable to be paid by recipient of service;
- Credit Shall be allowed after ST is paid
- Payment = Only ST
- Applicable only for RCM
- Cr available though payment not made to service provider ?

CENVAT CREDIT – REVERSAL

- Old 1st Proviso to Rule 4(7)
- Where ST was payable on Reverse Charge, Credit thereof was available on or after the date of payment
- Payment = Value of I/P service + ST thereon
- Applicable for RCM/ JCM
- New 2nd Proviso to Rule 4(7)
- Where recipient is liable to pay part of ST, and provider liable to pay balance ST
- Credit shall be allowed on or after the day on which payment is made
- Payment = Value of I/P service + ST thereon
- Applicable only for JCM
- Cr available only on payment to SP.

CENVAT CREDIT – REVERSAL

- Old 2nd Proviso to Rule 4(7)
- Where value of I/P service + ST thereon, not made within 3 m from date of invoice
- Recipient of I/P service liable to reverse Cr availed
- New 3rd Proviso to Rule 4(7)
- Where Value of I/P service + ST thereon is not made within 3 months of the date of invoice
- Except in respect of I/P service where whole of ST is liable to be paid by service recipient
- Service Recipient shall reverse Cr availed

CENVAT CREDIT – REVERSAL

- Before Insertion of Proviso to R.6(8)
- If service exported BUT
 - Payment not received within 6 m
 - Or such extended period allowed by RBI
- Cr utilized for service exported had to be reversed after the aforesaid time period – THOUGH THE SERVICE IS IN FACT EXPORTED
- After Insertion of Proviso to R. 6(8)
- If service exported BUT
 - Payment not received within 6 m
 - Or such extended period allowed by RBI
- NO NEED to REVERSE CREDIT if
 - Payment received
 - After aforesaid period
 - BUT within ONE YEAR from such period
- Cr to be Reversed & then taken again on receipt of Consideration
- Documentary Evidence

MEGA EXEMPTION

- New Exemptions:
- 2B. Services by operators of the Common Bio-medical Waste Treatment Facility – Service Provider
- to a “clinical establishment” – Service Recipient – Para 2(j)
- by way of treatment or disposal of bio-medical waste or the processes incidental thereto – Service for which exemption provided

MEGA EXEMPTION

- New Exemptions
- 40. Services by way of loading, unloading, packing, storage or warehousing of rice, [cotton, ginned or baled] – part added;
- 41. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;
- 42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.”

MEGA EXEMPTION - EDUCATION

<ul style="list-style-type: none">• Before Amendment• Services provided <u>TO</u> an educational institution in respect of education exempted from service tax by way of:<ul style="list-style-type: none">• Auxiliary education – Para 2(f)• Renting of IMP	<ul style="list-style-type: none">• After Amendment• Service provided<ul style="list-style-type: none">• <u>BY</u> an educational institution to its students, faculty and staff• <u>TO</u> an educational institution by way of:<ul style="list-style-type: none">• Transportation of students, faculty and staff;• Catering, including any mid-day meals scheme sponsored by the Government;• Security or cleaning or house-keeping services performed in such educational institution;• Services relating to admission to, or conduct of examination by, such institution;
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MEGA EXEMPTION - EDUCATION

- After Amendment
- (oa) “educational institution” means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994). ”

MEGA EXEMPTION - EDUCATION

- “auxiliary educational services” – DEFINITION REMOVED
- any services relating to imparting any skill, knowledge, education or
- development of course content or
- any other knowledge – enhancement activity,
 - whether for students or faculty, or
- any other services which educational institutions ordinarily carry out themselves
- but may obtain as outsourced services from any other person,
- including services relating to
 - admission to such institution,
 - conduct of examination,
 - catering for the students under any mid-day meals scheme sponsored by Government, or
 - transportation of students, faculty or staff of such institution;

EFFECT OF AMENDMENT

- On services relating to imparting any skill, knowledge, education
- On service of development of course content
- On any other knowledge – enhancement activity,
 - for students or faculty, or
- On any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person,
 - Except Security, Cleaning & House Keeping
- On services of renting provided to Educational Institution

EFFECT OF AMENDMENT

- On services relating to
 - admission to such institution, conduct of examination, - Still Exempt
 - catering for the students under any mid-day meals scheme sponsored by Government, or - EXEMPTION EXPANDED
 - transportation of students, faculty or staff of such institution;
 - Before on Service provided to educational institution was exempt - EFFECT
 - Now Service provided by educational institution also exempt

MEGA EXEMPTION - HOSPITALITY

- Before Amendment
 - Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent
- After Amendment
 - Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent

MEGA EXEMPTION - TRANSPORTATION

- Before Amendment
- Transport of passengers, with or without accompanied belongings, by:
 - (a)...
 - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire
- After Amendment
- Transport of passengers, with or without accompanied belongings, by:
 - (a)...
 - (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire

MEGA EXEMPTION - DEFINITION

- '(za) "radio taxi" means a taxi including a radio cab,
- by whatever name called,
- which is in two-way radio communication
- with a central control office and is enabled for tracking
- using Global Positioning System (GPS) or General Packet Radio Service (GPRS)

MEGA EXEMPTION - TRANSPORTATION

- Before Amendment
- Services provided to Government, Local Authority, Govt Authority:
- carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation
- After Amendment
- Services provided to Government, Local Authority, Govt Authority:
- water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation

MEGA EXEMPTION - ADDITIONS

- Organic Manure, Cotton – Ginned or Baled
 - Transportation by rail or vessel from one place in India to another – Entry No. 20
 - Transportation by Goods Transport Agency
- Services of Life Insurance provided under the following scheme
 - life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees

MEGA EXEMPTION - DELETIONS

- EXEMPTION DELETED w.e.f. 11.7.14
- Services by way of
 - technical testing or analysis of newly developed drugs,
 - including vaccines and herbal remedies,
- on human participants
- by a clinical research organisation
- approved to conduct clinical trials
- by the Drug Controller General of India

ABATEMENT - GTA

- CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken [by the service provider - INSERTED] under the provisions of the CENVAT Credit Rules, 2004.
- Effect:
 - No necessity to take certificate
 - W.e.f. 11.7.14

ABATEMENT – RENTING OF MOTOR VEHICLES FOR PASSENGERS

<ul style="list-style-type: none">• Before Amendment• Renting of any <u>motor vehicle designed to carry passengers</u>• Abatement 40%• Condition – Cr not available to Service providers	<ul style="list-style-type: none">• After Amendment• Renting of any “<u>motor cab</u>”• Option to take Cr of I/P service of renting of motor cab• <u>Full Cr</u> from a person who is paying ST on 40% of value• <u>40% Cr</u> from a person who is paying ST on Full value• <u>No Cr</u> of I/P service <u>other than above</u> has been taken by SP
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MOTOR CAB - MEANING

- "motor cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;
- Section 2(25) of MVA, 88

ABATEMENT – A/C CONTRACT CARRIAGE

- New Insertion – Entry No. 9A
- Effect of Amendment to Entry No. 23(b) of N/no. 25/12 ST
- Transportation of passengers by a contract carriage other than a motor cab.
- ST payable on 40% of the Value
- No CENVAT Credit
- Period – 11.7.14 to 30.9.14

ABATEMENT – RADIO TAXI

- New Insertion – Entry No. 9A
- Effect of removal of the words “Radio Taxi” from –ve List w.e.f. 1.10.14
- Transportation of passengers by
 - a contract carriage other than a motor cab
 - a radio taxi
- ST payable on 40% of the Value
- No CENVAT Credit
- In place of Entry No. 9A from 1.10.14

● ABATEMENT – OTHER AMENDMENTS

- Transport of goods in a vessel
 - Taxable value up to 10.7.14 – 50% of value
 - Taxable value from 11.7.14 – 40% of value
- Tour Operator
 - Credit of I/P service from another tour operator is available from 11.7.14

SERVICE TAX RULES

- Compulsory Electronic payment of Service Tax
- W.e.f. 1.10.14

JCM/ RCM

- New Service Inserted

SI No.	Service	Service Provider	Service Receiver
1A.	in respect of services provided or agreed to be provided by a <u>recovery agent</u> to a <u>banking company</u> or a <u>financial institution</u> or a <u>non-banking financial company</u>	Nil	100%"

- Director to Company

- Body Corporate added to Company

- In case of renting of motor vehicle

- Previously for Non-Abated Value: SP – 60%, SR – 40%
 - Now for Non-Abated Value: SP – 50%, SR – 50%
 - Effect

SERVICE TAX VALUATION RULES

• Before Amendment	• After Amendment
• W/c Composition Scheme	• W/c Composition Scheme
• (A) - Original Works – 40%	• (A) - Original Works – 40%
• (B) – W/c for goods – 70%	• (B) – W/c not covered in (A) - 70%
• (C) – Other than (A) & (B) – 60%	<ul style="list-style-type: none">• incl W/c for:• Mtn, Rep, Recon of Goods• Mtn, Rep, Comp & Fin Service for IMP
	• W.e.f. 11.7.14
	• Effect

INTEREST

Sl.No.	Period of delay	Rate of simple interest
(1)	(2)	(3)
1.	Up to six months	18 per cent.
2.	More than six months and up to one year	18 per cent. for the first six months of delay and 24 per cent. for the delay beyond six months.
3.	More than one year	18 per cent. for the first six months of delay; 24 per cent. for the period beyond six months up to one year and 30 per cent. for any delay beyond one year.

- 3% Concession available for SP with T/o < 60 lakhs

POINT OF TAXATION

• Before Amendment	• After Amendment
• POT for RCM = Date of Payment	• POT for RCM = Date of Payment
• First Proviso	• New First Proviso inserted
• Where payment is not made within <u>6 m</u> of the date of invoice, the point of taxation shall be determined as if this rule does not exist :	• Where payment is not made within <u>3 m</u> of the date of invoice, the point of taxation shall be <u>the date immediately following the said period of 3 m</u>
• Effect of First Proviso Before amendment	• Effect – Level playing field

PLACE OF PROVISION OF SERVICE

- Before Amendment
- Intermediary
- “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) between two or more persons, but does not include a person who provides the main service on his account
- After Amendment
- Intermediary
- “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;

- Effect – Rule 9

ADVANCE RULING

- Class of persons who can apply for advance ruling
- Before
 - Non Resident setting up JV with another Non Resident/ Resident
 - Resident setting up JV with a Non Resident
 - Wholly owned subsidiary of Indian company, whose holding company is a foreign company
- Now
 - A Resident Private Limited Company
- Notification No. 15/2014 ST dt.11.7.14

SEZ

- Exemption to services provided in SEZ unit for or to Developer of SEZ for authorized operations
- Procedural Relaxations
- Notification No. 7/2014 ST dt.11.7.14

THANK YOU