

INDIRECT TAXES UPDATE - 106

SERVICE TAX

Ad-hoc exemption for taxable services provided in the State of Uttarakhand

The CBEC vide ad hoc exemption Order No. 1/1/2013, dated 17.09.2013 has exempted the following taxable service provided to any person during the period between 17th September, 2013 to 31st March, 2014 in the State of **Uttarakhand** :

- (a) Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes;
- (b) Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess.

[Ad hoc exemption Order No. 1/1/2013, dated 17.09.2013]

Auxiliary educational services- Clarified

"Services provided **to** an educational institution in respect of education has been exempted by mega exemption *Notification No. 25/2012-ST dated 20.06.2012* from service tax, by way of, -

- (a) Auxiliary educational services; or
- (b) Renting of immovable property;

"auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the 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.

CBEC Vide *Circular no. 172/7 /2013-ST, date 19.09.2013* has clarified that all services relating to education are exempt from service tax and that there are many "auxiliary educational services" provided to an educational institution, are exempt from service tax.

For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the mega exemption notification.

Circular also enlists certain other examples for auxiliary educational services namely, hostels, housekeeping, security services, canteen, etc.

(Circular no. 172/7 /2013-ST, date 19.09.2013)

Arrest and Bail under Central Excise / Service Tax / Customs : CBEC issues Guidelines

CBEC has issued detailed Circulars to provide the guidelines in respect of arrest and bail provision under central excise, customs and service tax in view of the amendment made therein vide Finance Act, 2013.

Central Excise

The CBEC vide *Circular No. 974/08/2013-CX dated Sep 17, 2013* has issued clarification to prescribe the guidelines for non-bailable offences (covered under clause (b) or clause (bbb) of sub section 9(1) and duty involvement exceed Rs.50 Lacs), where decision to arrest may be taken by the **Commissioner** as under :

- (a) clandestine removal of manufactured goods;
- (b) removal of goods without declaring the correct assessable value and receiving a portion of sale price in cash which is in excess of invoice price and not accounted for in the books of account;
- (c) taking Cenvat Credit without the receiving the goods specified in the invoice;
- (d) taking Cenvat Credit on fake invoices;
- (e) Issuing Cenvatable invoices without delivering the goods specified in the said invoice.

However, all other cases of cognizable and non-bailable offences, not referred above, the decision to arrest shall be taken by the Commissioner only with the approval of the **jurisdictional Chief Commissioner**. Examples of such cases are :

- (a) removal of inputs as such, without reflecting such removal in records, on which Cenvat credit has been taken, without payment of amount equal to the credit availed on such inputs
- (b) irregular and wrongful availment of benefit of central excise duty exemption by reason of fraud, collusion, willful misstatement, suppression of facts, or contravention of the provisions of the Act or the rules with intent to evade payment of duty, etc

Service Tax

Circular No. 171/6/2013-ST dated 17.09.2013 has provided the guidelines for arrest and bail in relation to section 90 and 91 of the Finance Act, 1994 as amended by Finance Act, 2013. The Circular lays down that since arrest impinges on the personal liberty of an individual, this power must be exercised carefully. The officers have been instructed to strictly adhere to the legal stipulations contained in section 91 read with

section 89 of the Finance Act, 1994. The Circular specifies that to authorise the arrest, the Commissioner should have reason to believe and the same must be based on credible material which will stand judicial scrutiny.

The Circular also stresses upon the need to ensure proper investigation, prevention of the possibility of tampering with evidence or intimidating or influencing witnesses before deciding to arrest a person.

Customs :

Similarly, *Circular No. 38/2013-Cust dated 17.09.2013* has clarified that arrest in respect of an offence, categorized as bailable offence, should be effected only in exceptional situations which may include :

- (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs. 20 lakh.
- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs. 50 lakh.

All the above *three Circulars* also prescribe that the arrest memo must be in compliance with directions of the decision of the Hon'ble Supreme Court in the case of "*D.K Basu vs State of W.B*" reported as 1997(1) SCC 416 and should include :

- (a) brief facts of the case;
- (b) details of the person arrested;
- (c) gist of evidence against the person;
- (d) relevant Section (s) of the Customs Act, 1962 or other laws attracted to the case and to the arrestee;
- (e) the grounds of arrest must be explained to arrestee and this fact noted in the arrest memo;
- (f) a nominated person (as per details provided by arrestee) of the arrestee should be informed immediately and this fact also may be mentioned in the arrest memo;
- (g) the date and time of arrest may be mentioned in the arrest memo and the arrest memo should be given to person arrested under proper acknowledgement;
- (h) a separate arrest memo has to be made and provided to each individual/arrestee.

Detailed guidelines in relation to procedure for arrest , post arrest formalities and reporting system have been set out in the Circulars.

[*Circular No. 974/08/2013-CX dated 17.09.2013 , Circular No. 171/6/2013-ST dated 17.09.2013 and Circular No. 38/2013-Cust dated 17.09.2013*]

CUSTOM

Revision in All Industry Duty Drawback Rates

Drawback is the refund of duties, taxes and fees imposed on imported merchandise or excisable material used in the manufacture or processing of goods, which are manufactured in India and exported. The Central Government is empowered to fixed standard all industry rates. These rates are fixed as % of FOB Value of the Goods.

The Central Government vide *Notification No. 98/2013-Cus.(N.T.), dated 14.09.2013* has revised the All Industry duty drawback rates.

The Notes and Conditions are almost identical, but the rates have been reduced in most of the cases. Further, drawback will now be allowed on the milk products also.

The new rates will come into effect from 21st Sep, 2013.

[Notification No. 98/2013 Cus(NT) dated 14.09.2013]

Source: www.cbec.gov.in

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